

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/1. SCOPE AND DESCRIPTION/(1) IN GENERAL/1201. Meaning of 'personal property'.

PERSONAL PROPERTY (

1. SCOPE AND DESCRIPTION

(1) IN GENERAL

1201. Meaning of 'personal property'.

Personal property or personalty may be roughly described as comprising all forms of property, movable or immovable, corporeal or incorporeal, other than freehold estates and interests in land (which may include chattels affixed to land¹) and its appurtenances². Moreover, by the equitable doctrine of conversion, equitable interests in freehold property are sometimes treated as personal property, as, for example, where the freehold is held by trustees upon trust for sale³, where there is an agreement for the sale of land⁴, or on the exercise of an option to purchase⁵. The distinction in English law between personal and real (or freehold) property was manifested in the early rule that freehold estates and interests in land were specifically recoverable, by a 'real' action, from a wrongful taker, whereas no action lay to compel restitution of other forms of property, the appropriate remedy for such cases being a mere 'personal' action for damages⁶; and, although the later law provided remedies for the recovery of some forms of personal property⁷, such innovations did not remove them from the sphere of personal property or from those other rules which had become characteristic of it. At common law the rules applicable to personal property differed in many important respects from those applicable to real property, but the removal of many of these differences by legislation during the nineteenth and twentieth centuries⁸ has deprived the distinction between realty and personalty of much of its former importance⁹. When the question of the application of a foreign system of law arises, a more important distinction is that to be drawn between movables and immovables¹⁰.

Personal property is divisible into two classes: chattels personal; and chattels real. Chattels personal have retained much of their former individuality; in particular, the rules which govern the acquisition and alienation inter vivos of chattels personal differ from those applicable to real property¹¹.

1 As to the general rule of law that anything affixed to the freehold becomes part of it, and the exceptions to the rule, see *Bain v Brand* (1876) 1 App Cas 762 at 767, HL per Lord Cairns LC; *Simmons v Midford* [1969] 2 Ch 415, [1969] 2 All ER 1269 (drains); *H E Dibble Ltd v Moore* [1970] 2 QB 181, [1969] 3 All ER 1465, CA; EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 351; LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 173 et seq. Growing crops may be either chattels or interests in land according to whether they are severed when sold and whether they are fructus industriales or fructus naturales: see AGRICULTURAL LAND vol 1 (2008) PARAS 370, 371.

2 There are certain interests which partake of the nature of real estate which may not be completely covered by the above definition: see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARAS 335, 347. For all practical purposes, however, the definition is believed to be sufficient. Examples of such interests are peerages and dignities (see *Nevil's Case* (1604) 7 Co Rep 33a; *Lord Advocate v Walker Trustees* [1912] AC 95 at 104, HL; and PEERAGES AND DIGNITIES vol 79 (2008) PARAS 808, 865); and deeds of real estate (as to the common law rule by which these ordinarily pass with the realty to which they relate, and as to the exceptions to the rule, see Co Litt 6a; *Harrington v Price* (1832) 3 B & Ad 170; *Re Williams and Duchess of Newcastle's Contract* [1897] 2 Ch 144 at 148; *Beaumont v Jeffery* [1925] Ch 1; REAL PROPERTY vol 39(2) (Reissue) PARA 87; and SALE OF LAND vol 42 (Reissue) PARA 131). As to the distinction between property and a power over property see *Re Armstrong, ex p Gilchrist* (1886) 17 QBD 521, CA and POWERS vol 36(2) (Reissue) PARA 220.

3 See EQUITY vol 16(2) (Reissue) PARA 701 et seq. An agreement for the sale of an interest in the proceeds of sale of land under a trust for sale may, however, constitute an agreement for the sale of an interest in land: see *Cooper v Critchley* [1955] Ch 431, [1955] 1 All ER 520, CA. Cf, however, *Stevens v Hutchinson* [1953] Ch 299, [1953] 1 All ER 699; *Irani Finance Ltd v Singh* [1971] Ch 59, [1970] 3 All ER 199, CA; *Elias v Mitchell* [1972] Ch 652, [1972] 2 All ER 153; *Cedar Holdings Ltd v Green* [1981] Ch 129, [1979] 3 All ER 117, CA; *Williams and Glyn's Bank Ltd v Boland* [1981] AC 487, [1980] 2 All ER 408, HL; and see *Gray (surviving executor of Lady Fox deceased) v IRC* [1994] STC 360, CA; and REAL PROPERTY vol 39(2) (Reissue) PARA 77.

4 See EQUITY vol 16(2) (Reissue) PARA 713.

5 See EQUITY vol 16(2) (Reissue) PARA 714. In relation to a right of pre-emption see *Pritchard v Briggs* [1980] Ch 338, [1980] 1 All ER 294, CA.

6 The action of detinue, by which the rightful owner of a chattel might claim the return of the chattel or its value, was not a 'real' action, inasmuch as it allowed the alternative of a money payment. This alternative was necessary in that the wrongful taker might have destroyed the chattel or have removed it out of the jurisdiction: Bract lib 3 c 3 fol 102b; 2 Pollock and Maitland's History of English Law (2nd Edn) 173; 3 Holdsworth's History of English Law 322. Detinue has now been abolished and the scope of conversion extended by the Torts (Interference with Goods) Act 1977 s 2: see TORT vol 45(2) (Reissue) PARA 543.

7 Leaseholds became specifically recoverable with the extension of the action of ejectment at the end of the fifteenth century: 2 Pollock and Maitland's History of English Law (2nd Edn) 109; 3 Holdsworth's History of English Law 23, 216. See also REAL PROPERTY. As to the right to recover particular chattels see PARAS 1233, 1235 post.

8 The formalities prescribed by English law for wills of real or personal property were assimilated by the Wills Act 1837 s 9 (substituted by the Administration of Justice Act 1982 s 17) (see WILLS vol 50 (2005 Reissue) PARA 351 et seq) and the Wills (Soldiers and Sailors) Act 1918 s 3 (as amended) (see WILLS vol 50 (2005 Reissue) PARA 371). The common law rule by which only the personal estate of a deceased person devolved upon his personal representatives as such was extended to real property by the Land Transfer Act 1897 Pt I (ss 1-5) and the Administration of Estates Act 1925 Pt I (ss 1-3). The rules of descent upon intestacy were assimilated by Pt IV (ss 45-52) and the Law of Property Act 1925 s 130 (4): see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 583 et seq. As to the construction of testamentary gifts of 'real' or 'personal' property see *Butler v Butler* (1884) 28 ChD 66; *Re Holt, Holt v Holt* [1921] 2 Ch 17; *Re Kempthorne, Charles v Kempthorne* [1930] 1 Ch 268, CA; and EQUITY vol 16(2) (Reissue) PARAS 706, 712; WILLS vol 50 (2005 Reissue) PARA 582. Entailed interests can be created in personal property: see the Law of Property Act 1925 s 130 and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq. Moreover, the rule in *Dearle v Hall* (1823) 3 Russ 1, which formerly governed the priorities of competing claims to an equitable interest in pure personalty, has been extended to equitable interests in land by the Law of Property Act 1925 s 137: see CHOSSES IN ACTION vol 13 (2009) PARA 45.

9 It remains important where a statute or document makes a distinction between realty and personalty eg wills made by British subjects abroad: see PARA 1204 note 16 post and CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 452-453. The distinction is still material to a limited extent for determining the incidence of inheritance tax, and the charge for unpaid tax: see the Inheritance Tax Act 1984 s 211, s 237 (as amended) and s 238 and INHERITANCE TAXATION vol 24 (Reissue) PARAS 651, 684, 686. It is also to be noted that there is no corresponding provision in relation to personalty to that contained in the Limitation Act 1980 s 17 which provides that, on the expiration of the period prescribed by that Act for any person to bring an action to recover land (including a redemption action), the title of that person to the land is to be extinguished: cf LIMITATION PERIODS vol 68 (2008) PARAS 940, 1095 et seq.

Riparian rights can be conferred only on those who have interests in land adjoining a river, and not on those who only have a chattel, such as a jetty, on the foreshore which does not form part of the land: *Tate and Lyle Industries Ltd v Greater London Council* [1983] 2 AC 509, [1983] 1 All ER 1159, HL.

It is doubtful whether restrictions on the manner of user of chattels, even ships, imposed by contract can be enforced in equity against a purchaser or assignee of the chattel as they can against a successor in title of land: see *Lord Strathcona SS Co Ltd v Dominion Coal Co Ltd* [1926] AC 108, PC, as criticised in *Port Line Ltd v Ben Line Steamers Ltd* [1958] 2 QB 146, [1958] 1 All ER 787; and EQUITY vol 16(2) (Reissue) PARA 616 et seq. It is clear, however, that restrictions on the price at which an article can be resold are not enforceable except between the parties to the contract (*Taddy & Co v Sterious & Co* [1904] 1 Ch 354; *McGruther v Pitcher* [1904] 2 Ch 306, CA) unless either the restriction is contained in a licence to deal with a patented article (*National Phonograph Co of Australia Ltd v Menck* [1911] AC 336, PC; *Dunlop Rubber Co Ltd v Longlife Battery Depot* [1958] 3 All ER 197, [1958] 1 WLR 1033) or the proceedings are brought under the Resale Prices Act 1976 s 26.

10 See CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 380 et seq, 405-411.

11 See PARA 1231 et seq, 1249 et seq post.

UPDATE

1201 Meaning of personal property

TEXT AND NOTES--By virtue of the definition of 'property' in the Law of Property (Miscellaneous Provisions) Act 1994 s 1(4), any interest in personal property is subject to the covenants for title to be implied on a disposition of property under the 1994 Act Pt I (see SALE OF LAND vol 42 (Reissue) PARAS 349-351).

NOTE 9--Limitation Act 1980 s 17 amended by the Land Registration Act 2002.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/1. SCOPE AND DESCRIPTION/(1) IN GENERAL/1202. Names.

1202. Names.

There is no property in a name as such, and consequently, in the absence of malicious intention¹ or misrepresentation, a person has a right to use his own name or adopt another name for himself² or his property³ as he pleases, even though inconvenience or annoyance may be caused⁴.

By use of a particular name in connection with a business or profession, whether the name is that of the user or is an adopted name, a right to prevent another person from using that name in a manner liable to cause confusion in the mind of the public may, however, be acquired⁵. The basis of this right of action is the passing-off by the defendant of his goods or business as being the plaintiff's goods or business, which injures a right of property of the plaintiff, that right of property not being in the name or description of the goods or a business, but being the right to the goodwill of the business⁶. Accordingly an individual may be restrained by injunction from using his own name in relation to goods or a business in such manner as in fact to represent them as being the goods or a business of another, even though the use of the name is an honest use, not intended to deceive⁷.

If a company is being formed or a business name is being used, the choice of the name is subject to statutory restriction against registration or use of certain names⁸; and on the registration of a friendly society its name is subject to statutory restriction against registration of a name so nearly resembling that of an existing society as to be likely to deceive⁹.

Valid registration of a trade mark confers on the proprietor the right to prevent others using the mark, or a mark resembling it, in respect of goods for which it is registered; surnames of individuals may be registered if distinctiveness is sufficiently established¹⁰. The subject of registration of trade marks and the rights that it confers is discussed elsewhere¹¹.

1 *Clark v Chalmers* 1961 JC 60 (malicious intention).

2 *Burgess v Burgess* (1853) 3 De GM & G 896; *Du Boulay v Du Boulay* (1869) LR 2 PC 430.

3 *Day v Brownrigg* (1878) 10 ChD 294, CA (name of house); *Street v Union Bank of Spain and England* (1885) 30 ChD 156 (telegraphic address). There is no right of property in the name of a political party: *Kean v McGivan* [1982] FSR 119, CA (Social Democratic Party). As the right to a peerage can be tried only by the House of Lords, a peer cannot, after the dissolution of his marriage, obtain an injunction against his former wife for continuing to use her title after remarriage to a commoner: *Earl Cowley v Countess Cowley* [1901] AC 450, HL. Similarly, a right to bear arms is not a right of property which can be dealt with in the ordinary courts but such a right can still be adjudicated upon in the Court of Chivalry: *Manchester Corp'n v Manchester Palace of Varieties Ltd* [1955] P 133, [1955] 1 All ER 387, Court of Chivalry; and see PEERAGES AND DIGNITIES vol 79 (2008) PARAS 842-843, 874.

4 As to liability to an injunction, if passing-off in fact results from the honest use of one's own name in trade, see the text and note 5 infra.

5 *Burgess v Burgess* (1853) 3 De GM & G 896; *Thorley's Cattle Food Co v Massam* (1880) 14 ChD 763, CA; *Landa v Greenberg* (1908) 24 TLR 441; *Hines v Winnick* [1947] Ch 708, [1947] 2 All ER 517. In the absence of an express or implied term in his contract of employment, the pseudonym under which a journalist writes belongs to the journalist and not to the employer: *Forbes v Kemsley Newspapers Ltd* (1951) 2 TLR 656; and see PRESS, PRINTING AND PUBLISHING vol 36(2) (Reissue) PARA 457. A plaintiff must, however, establish that he has acquired a reputation under the name in question: *Serville v Constance* [1954] 1 All ER 662, [1954] 1 WLR 487. As to the liability of a person who without licence puts a false name to a literary, dramatic, musical or artistic work or alters such a work see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 311 et seq; as to the proprietary right in the name of a defunct periodical see *Norman Kark Publications Ltd v Odhams Press Ltd* [1962] 1 All ER 636, [1962] 1 WLR 380; and as to passing-off actions see TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 416 et seq.

6 See *Spalding & Bros v A W Gamage Ltd* (1915) 84 LJ Ch 449 at 450, HL; *Draper v Trist* [1939] 3 All ER 513 at 526, CA; *Bollinger v Costa Brava Wine Co Ltd* [1960] Ch 262 at 276, [1959] 3 All ER 800 at 806; *Bollinger v Costa Brava Wine Co Ltd (No 2)* [1961] 1 All ER 561, [1961] 1 WLR 277; *Erven Warnink BV v J Townend & Sons (Hull) Ltd* [1979] AC 731, [1979] 2 All ER 927, HL.

7 See *Baume & Co Ltd v A H Moore Ltd* [1958] Ch 907, [1958] 2 All ER 113, CA; *Parker-Knoll Ltd v Knoll International Ltd* [1962] RPC 265, HL; and TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARAS 344, 438.

8 See generally COMPANIES vol 14 (2009) PARA 196 et seq. As to business names see the Business Names Act 1985; COMPANIES vol 14 (2009) PARA 223 et seq; and TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 509.

9 See FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 2125-2126.

10 See the Trade Marks Act 1994 ss 9, 10, 26(2); *Teofani & Co Ltd v Teofani, Re Teofani & Co's Trade Mark* [1913] 2 Ch 545, CA; and TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 84 et seq.

11 See TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 1 et seq.

UPDATE

1202 Names

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/1. SCOPE AND DESCRIPTION/(1) IN GENERAL/1203. Chattels real.

1203. Chattels real.

Chattels real are interests concerning or savouring of realty, such as a term of years in land¹, an annuity issuing out of a term of years², or the next presentation to a church³, which have the quality of immobility which makes them akin to realty⁴, but lack indeterminate duration⁵. In some respects they are subject, like other chattels, to the law of personal property, but in others are subject to the law of real property⁶.

1 *Countess of Bridgewater v Duke of Bolton* (1704) 6 Mod Rep 106 at 107; *Freke v Lord Carbery* (1873) LR 16 Eq 461 at 466; *Re Watson, Carlton v Carlton* (1887) 35 WR 711; *Tomkins v Jones* (1889) 22 QBD 599 at 602, CA; *Re Grassi, Stubberfield v Grassi* [1905] 1 Ch 584; *Crage v Julian* [1992] 1 All ER 744, [1992] 1 WLR 372, CA; and see REAL PROPERTY. As to options in leases to purchase the fee simple see *Woodall v Clifton* [1905] 2 Ch 257 at 279, CA per Romer LJ and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 135.

2 *Re Fraser, Lowther v Fraser* [1904] 1 Ch 111 (affd [1904] 1 Ch 726, CA); *Re Ramadge's Settlement, Hamilton v Ramadge* [1919] 1 IR 205. See further RENTCHARGES AND ANNUITIES.

3 Fitz Nat Brev 33, 34; *R v Archbishop of Canterbury, Fane v Hudson* (1588) 4 Leon 107; Co Litt 388a; and see ECCLESIASTICAL LAW vol 14 paras 776, 810.

4 See CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 399-404.

5 Co Litt 42a, 43b, 118b; 2 Bl Com (14th Edn) 386. See also *Re Fraser, Lowther v Fraser* [1904] 1 Ch 111 at 116 (affd [1904] 1 Ch 726, CA); *Countess of Bridgewater v Duke of Bolton* (1704) 6 Mod Rep 106 at 107; EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 360; and REAL PROPERTY.

6 Co Litt 422, 118b; *Whitaker v Ambler* (1758) 1 Eden 151 at 152; *Prescott v Barker* (1874) 9 Ch App 174 at 190.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/1. SCOPE AND DESCRIPTION/(2) CHATTELS PERSONAL/1204. Chattels personal.

(2) CHATTELS PERSONAL

1204. Chattels personal.

Chattels personal are, strictly speaking, things movable, but in modern times the expression is used to denote any kind of property other than real property and chattels real¹.

'Personalty' or 'personal property' includes many kinds of property unknown to the common law, such as bills of exchange, bank notes and cheques², land improvement charges³, copyrights⁴, patents⁵, shares in joint stock companies⁶, debentures⁷, government annuities and stock in the public funds⁸, goodwill⁹, and the exclusive right of burial in any particular place¹⁰; but does not include title deeds relating to real estate¹¹, heirlooms in the strict sense¹², fixtures¹³ or wild animals¹⁴, and it does not always include growing crops or trees¹⁵.

Some kinds of property are declared by statute to be personalty or to be capable of being dealt with as personalty¹⁶. Certain things are not the subject of property¹⁷. An option to purchase land is, however, property and presumably is personal property¹⁸.

1 Thus in its wider sense 'chattels personal' includes choses in action: see PARA 1205 post. 'Chattel' is derived from the Latin 'catalla', which primarily signified beasts of husbandry or cattle, but in its secondary sense it was applied to all kinds of movables: 2 Bl Com (14th Edn) 385; 2 Pollock and Maitland's History of English Law (2nd Edn) 149. As to whether a prehistoric boat embedded on the soil below the surface is a chattel see *Elwes v Brigg Gas Co* (1886) 33 ChD 562. As to shares being chattels for the purpose of Supreme Court fees see *Re Givan, Rees v Green* [1966] 3 All ER 393, [1966] 1 WLR 1378. As to what things are regarded as 'movable' see CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 399, 405-411; DISTRESS vol 13 (2007 Reissue) PARA 937 et seq; EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 335; *Bain v Brand* (1876) 1 App Cas 762 at 767, HL; LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 173 et seq; and MORTGAGE vol 77 (2010) PARA 195.

2 See FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1400 et seq.

3 See AGRICULTURAL LAND vol 1 (2008) PARA 632.

4 See COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARAS 158, 172-173.

5 See the Patents Act 1977 s 30(1) and PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARAS 360, 373.

6 Companies Act 1985 s 182(1) (now repealed); and see CHOSSES IN ACTION vol 13 (2009) PARA 4; COMPANIES vol 15 (2009) PARAS 1055, 1694.

7 *Attree v Hawe* (1878) 9 ChD 337 at 351, CA. As to the nature of the interest of debenture holders see COMPANIES vol 15 (2009) PARA 1756.

8 See the National Debt Act 1870 s 9 (repealed) (government annuities); the Bank of England Act 1696 s 33 (repealed) (as to the transfer of existing Bank of England stock to the Treasury see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 793); 9 Will 3 c 44 (1697) (East India Company), s 71 (repealed) (East India Company shares); *Dundas v Dutens* (1790) 1 Ves 196 at 198; *Wildman v Wildman* (1803) 9 Ves 174 at 177; *R v Capper* (1817) 5 Price 217 at 263, 264. As to annuities see RENTCHARGES AND ANNUITIES.

9 See PARA 1206 et seq post. See also PARTNERSHIP vol 79 (2008) PARA 213; and COMPETITION.

10 See CREMATION AND BURIAL vol 10 (Reissue) PARAS 1068-1073.

11 As to title deeds see *Harrington v Price* (1832) 3 B & Ad 170 at 173 and REAL PROPERTY vol 39(2) (Reissue) PARA 86 et seq.

12 These were heirlooms which by virtue of a special custom descended with the inheritance of the land: *Viscount Hill v Dowager Viscountess Hill* [1897] 1 QB 483 at 494, CA per Chitty LJ; and see SETTLEMENTS vol 42 (Reissue) PARA 938. As to the abolition of special customs of descent see the Administration of Estates Act 1925 ss 45 (1) (a), 57 (2) and EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARAS 347, 583 et seq.

13 See *Bain v Brand* (1876) 1 App Cas 762 at 767, HL and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 173 et seq.

14 See ANIMALS vol 2 (2008) PARA 711.

15 See AGRICULTURAL LAND vol 1 (2008) PARAS 370, 371; *Re Ainslie, Swinburn v Ainslie* (1885) 30 ChD 485, CA (where growing timber was held to be real estate until severed). Cf the definition of 'goods' in the Sale of Goods Act 1979 s 61 (1): see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 30. As to the theft of property generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 282 et seq, especially paras 286-288.

16 In the Wills Act 1837 s 1 'personal estate' included leasehold estates and other chattels real, money, shares of government and other funds, securities for money (not being real estate), debts, choses in action, rights, credits and goods; and in *Re Lyne's Settlement Trusts, Re Gibbs, Lyne v Gibbs* [1919] 1 Ch 80, CA, 'personal estate' in that Act and in the Wills Act 1861 s 1 was held to include an equitable interest in freeholds held on trust for sale. The Wills Act 1861 was repealed by the Wills Act 1963 s 7 (3), and a distinction is made in that Act between movable and immovable property: see s 2 (1) (b); and see CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 380 et seq, 449 et seq. Copyright is transmissible by assignment, by testamentary disposition or by operation of law, as personal or movable property: see the Copyright, Designs and Patents Act 1988 s 90 (1) and COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 158. Subject to the provisions of the Trade Marks Act 1994, equities in respect of trade marks are enforceable in the like manner as in respect of other personal property: see s 26 (2) and TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 127. As to bills of sale see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1662 et seq; and as to descent on intestacy see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 591. See also CHARITIES vol 8 (2010) PARA 68 et seq. As to the significance of the term 'property' in relation to inheritance tax see INHERITANCE TAXATION vol 24 (Reissue) PARA 416 note 3.

17 Thus there is no property in a dead body: see CREMATION AND BURIAL vol 10 (Reissue) PARA 905. Benefits which are entirely at the discretion of trustees did not constitute property for estate duty purposes: *Re J Bibby & Sons Ltd, Pensions Trust Deed, Davies v IRC* [1952] 2 All ER 483. As to pews in a church see *Re St Mary's, Banbury* [1986] Fam 24, [1985] 2 All ER 611, Oxford Consistory Ct; affd [1987] Fam 136, [1987] 1 All ER 247, Arches Ct of Canterbury; and ECCLESIASTICAL LAW vol 14 para 1086. As to church monuments and their accoutrements see *Re St Andrew's, Thornhaugh* [1976] Fam 230, [1976] 1 All ER 154, Peterborough Consistory Ct; *Re St Bartholomew's, Aldbrough* [1990] 3 All ER 440, York Consistory Ct; and ECCLESIASTICAL LAW vol 14 para 1085.

18 *George Wimpey & Co Ltd v IRC* [1975] 2 All ER 45 at 49, [1975] 1 WLR 995 at 1000, CA; but note the effect of the equitable doctrine of conversion (see EQUITY vol 16(2) (Reissue) PARAS 713-714).

UPDATE

1204 Chattels personal

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/1. SCOPE AND DESCRIPTION/(2) CHATTELS PERSONAL/1205. Corporeal and incorporeal chattels.

1205. Corporeal and incorporeal chattels.

Property in chattels personal may be in possession or in action. It is in possession where the possessor has not only the right to enjoy, but the actual enjoyment of, the chattels, the chattels being in that case sometimes called 'corporeal chattels'. Where only a bare right to enjoy exists, the property is said to be 'in action', and the chattels are called 'incorporeal'¹. Personal property may also be partly in possession and partly in action, for example bills of exchange and promissory notes. The debt secured by them is a chose in action², but the actual document is a chose in possession³.

Choses or things in possession include all things which are at once tangible, movable and visible, and of which possession can be taken, for example animals, household articles, money, jewels, corn, garments, and everything else that can properly be put in motion and transferred from place to place⁴.

The expression 'choses in action' or 'things in action' in the literal sense means things recoverable by suit or action at law as contrasted with things or choses in actual physical possession⁵. For general purposes, however, the expression 'choses in action' is now used in order to distinguish those chattel interests which, unlike choses in possession, are incapable of transfer by delivery of the subject matter in the manner described subsequently⁶.

The peculiarities of choses in action are described in detail elsewhere⁷. Accordingly, the remainder of this title is concerned principally with corporeal chattels or choses in possession⁸.

1 *Colonial Bank v Whinney* (1885) 30 ChD 261 at 285, 286, CA per Fry LJ. Thus shares in a company are personal chattels that are not in possession and are therefore choses in action: see *Colonial Bank v Whinney* (1886) 11 App Cas 426 at 434, 438-440, HL per Lord Blackburn.

2 *Marquis of Hertford v Lord Lowther* (1843) 7 Beav 1; and see CHOSSES IN ACTION vol 13 (2009) PARA 3 et seq.

3 *Re Prater, Desing v Beare* (1888) 37 ChD 481, CA; *Re Robson, Robson v Hamilton* [1891] 2 Ch 559; cf *Re Craven, Crewdson v Craven* (1908) 24 TLR 750; *Joseph v Phillips* [1934] AC 348, PC. Such documents may be the object of theft: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 285.

4 2 BI Com (14th Edn) 387.

5 2 BI Com (14th Edn) 396; 7 Holdsworth's History of English Law 515 et seq; and see CHOSSES IN ACTION vol 13 (2009) PARA 1 et seq. Strictly speaking, 'choses in action' includes choses in action real eg the right to recover real property from a disseisor. In modern times, however, it is seldom necessary to distinguish choses in action real from other interests in real property, inasmuch as the same freedom and methods of alienation are now applicable to rights of entry as to other interests in real property: Real Property Act 1845 s 6 (repealed, but in effect re-enacted by the Law of Property Act 1925 s 4 (2)).

6 See PARA 1253 et seq post. As to the methods by which choses in action may be assigned see CHOSSES IN ACTION vol 13 (2009) PARA 14 et seq.

7 See CHOSSES IN ACTION vol 13 (2009) PARA 1 et seq.

8 In certain matters choses in action and in possession are subject to substantially similar rules: see PARA 1243 et seq post (co-ownership) PARA 1264 post (alienation at death) PARA 1268 et seq post (restraints on alienation) and PARAS 1229, 1230 post (successive interests).

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/1. SCOPE AND DESCRIPTION/(3) GOODWILL/1206. Meaning of 'goodwill'.

(3) GOODWILL

1206. Meaning of 'goodwill'.

The goodwill of a business is the whole advantage of the reputation and connection formed with customers together with the circumstances, whether of habit or otherwise, which tend to make that connection permanent¹. It represents in connection with any business or business product the value of the attraction to customers which the name and reputation possesses².

1 *Trego v Hunt* [1896] AC 7 at 16, 17, 23, 27, HL (where Lords Herschell, Macnaghten and Davey criticised as too narrow the definition by Lord Eldon of goodwill as 'nothing more than the probability that the old customers will resort to the old place'); *Cruttwell v Lye* (1810) 17 Ves 335 at 346. The wider view is to be found in *Kennedy v Lee* (1817) 3 Mer 441 at 452 (where Lord Eldon LC attributed the goodwill of a trade to the fact of sole ownership); *England v Downs* (1842) 6 Beav 269 at 276 (in relation to a licensed house); *Potter v IRC* (1854) 10 Exch 147 at 157 per Pollock CB; *Wedderburn v Wedderburn (No 4)* (1856) 22 Beav 84 at 104 per Romilly MR; *Churton v Douglas* (1859) John 174; *Ginesi v Cooper & Co* (1880) 14 ChD 596 at 600 per Jessel MR; *IRC v Muller & Co's Margarine Ltd* [1901] AC 217 at 223, HL per Lord Macnaghten ('What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation, and connection of business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old established business from a new business at its first start'); at 227 per Lord Davey ('The term goodwill is nothing more than a summary of the rights accruing to the [purchasers] from their purchase of the business and property employed in it'); and at 235 per Lord Lindley ('I understand the word to include whatever adds value to a business by reason of situation, name, and reputation, connection, introduction to old customers, and agreed absence from competition, or any of these things'); *Hill v Fearis* [1905] 1 Ch 466 at 471 per Warrington J; and see *Corbin v Stewart* (1911) 28 TLR 99; *Shaw Bros (Hong Kong) Ltd v Golden Harvest (HK) Ltd* [1972] RPC 559 (Hong Kong FC); *H P Bulmer Ltd and Showerings Ltd v J Bollinger SA* [1977] 2 CMLR 625, CA; *Shelley v Cunane* [1983] FSR 390.

2 *R J Reuter Co Ltd v Ferd Mulhens* [1954] Ch 50 at 89, [1953] 2 All ER 1160 at 1179, CA per Evershed MR.

UPDATE

1206 Meaning of 'goodwill'

NOTE 1--Words merely descriptive of a service cannot give rise to goodwill: *British Broadcasting Corp v Talksport Ltd* [2001] FSR 53.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/1. SCOPE AND DESCRIPTION/(3) GOODWILL/1207. Goodwill as property.

1207. Goodwill as property.

Goodwill is a species of personal property¹. It may, for example, be bought and sold, disposed of by will² and charged³; and the owner may vindicate his exclusive right to it by process of law⁴, as in a passing-off action⁵. Goodwill is property for the purposes of the charge to stamp duty⁶ on any contract for the sale of an interest in property chargeable as a conveyance on sale⁷, and not merely an enhancement of the value of the premises to which it is attached⁸. Goodwill of an enemy business in Great Britain is property which would vest in the custodian of enemy property on the outbreak of war⁹.

1 *IRC v Muller & Co's Margarine Ltd* [1901] AC 217 at 223, HL per Lord Macnaghten; *R J Reuter Co Ltd v Ferd Mulhens* [1954] Ch 50 at 89, [1953] 2 All ER 1160 at 1179, CA; *Ulster Transport Authority v James Brown & Sons Ltd* [1953] NI 79 at 88.

2 *IRC v Muller & Co's Margarine Ltd* [1901] AC 217 at 223, HL per Lord Macnaghten. As to the transfer of goodwill generally see COMPETITION vol 18 (2009) PARA 373.

3 *R J Reuter Co Ltd v Ferd Mulhens* [1954] Ch 50 at 89, [1953] 2 All ER 1160 at 1179, CA, where Evershed MR instanced the charging of a company's goodwill by debentures; and see COMPANIES vol 15 (2009) PARAS 1372, 1637.

4 *IRC v Muller & Co's Margarine Ltd* [1901] AC 217 at 223, HL per Lord Macnaghten.

5 See *Bollinger v Costa Brava Wine Co Ltd* [1960] Ch 262 at 273, [1959] 3 All ER 800 at 806; *Bollinger v Costa Brava Wine Co Ltd (No 2)* [1961] 1 All ER 561, [1961] 1 WLR 277; and the cases cited in PARA 1202 note 6 ante.

6 le under the Stamp Act 1891 s 59 (1) (as amended): see STAMP DUTIES AND STAMP DUTY RESERVE TAX.

7 *Benjamin Brooke & Co Ltd v IRC* [1896] 2 QB 356, DC; and see STAMP DUTIES AND STAMP DUTY RESERVE TAX.

8 See *West London Syndicate Ltd v IRC* [1898] 2 QB 507, CA and STAMP DUTIES AND STAMP DUTY RESERVE TAX. Where, however, a sum awarded as the price of land on compulsory purchase includes a sum as compensation for loss of business, that sum forms part of the consideration and is liable to duty accordingly: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 677.

9 *R J Reuter Co Ltd v Ferd Mulhens* [1954] Ch 50, [1953] 2 All ER 1160, CA; *Adrema Werke Maschinenbau GmbH v Custodian of Enemy Property* [1957] RPC 49, CA (decided under the Trading with the Enemy Act 1939 and the Distribution of German Enemy Property Act 1949); and see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARAS 585-586.

UPDATE

1207 Goodwill as property

NOTE 6--Stamp Act 1891 s 59 (as amended) repealed: Finance Act 1999 Sch 19 para 1, Sch 20 Pt V(2).

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/1. SCOPE AND DESCRIPTION/(3) GOODWILL/1208. How far goodwill is a separate entity.

1208. How far goodwill is a separate entity.

Goodwill is not a thing which can be separated and dealt with apart from the business out of which it arises¹; but it may be dealt with as an entity separate from the particular premises in which that business has been carried on². Where, however, it is attached to premises and enhances their value, it is inseparable from, and forms part of, the security of the mortgagee of premises unless it is of a character personal to the mortgagor on the terms of the transaction as such or it is shown that only the premises are intended to be charged³.

Goodwill enhancing the value of property is also an item to be taken into account in assessing compensation for the compulsory acquisition of the property to which the goodwill attaches⁴.

On the dissolution of a business carried on by a partnership, the goodwill forms part of the assets to be realised upon distribution⁵. Goodwill vests in the trustee in bankruptcy on the adjudication as bankrupt of a person carrying on a business except where the goodwill is attached to premises which have been mortgaged⁶ or, it seems, where it is personal to the bankrupt⁷. Registered trade marks are transmissible by assignment, testamentary disposition or operation of law in the same way as other personal property and are so transmissible either

in connection with the goodwill of a business or independently⁸; and nothing in the Trade Marks Act 1994 is to be construed as affecting the assignment or other transmission of an unregistered trade mark as part of the goodwill of a business⁹.

1 *Smale v Graves* (1850) 3 De G & Sm 706; *Robertson v Quiddington* (1860) 28 Beav 529; and see *Wedderburn v Wedderburn (No 4)* (1856) 22 Beav 84 at 104 per Romilly MR; *Smith v Everett* (1859) 27 Beav 446; *Hall v Barrows* (1863) 4 De GJ & Sm 150; *IRC v Muller & Co's Margarine Ltd* [1901] AC 217 at 224, HL per Lord Macnaghten; *Alain Bernardin et Cie v Pavilion Properties Ltd* [1967] RPC 581; *Star Industrial Co Ltd v Yap Kwee Kor (trading as New Star Industrial Co)* [1976] FSR 256, PC; *Anheuser-Busch Inc v Budejovicky Budvar NP (trading as Budweiser Budvar Brewery)* [1984] FSR 413 at 448, CA.

2 *West London Syndicate v IRC* [1898] 2 QB 507, CA (even though by the terms of a lease it must necessarily be sold with the premises); *IRC v Muller & Co's Margarine Ltd* [1901] AC 217 at 230, 231, HL per Lord Brampton; *Morris v Moss* (1855) 25 LJ Ch 194 (where it was held that a widow might sell for her own benefit the goodwill of a business which was carried on on premises belonging to her husband's estate).

3 See BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 415; MORTGAGE vol 77 (2010) PARA 198.

4 See COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 849. For a method of assessing compensation for loss of goodwill see *LCC v Tobin* [1959] 1 All ER 649, [1959] 1 WLR 354, CA. Formerly statutory provision was made for compensation for goodwill to be paid to tenants of business premises on quitting the premises: see the Landlord and Tenant Act 1927 s 4 (repealed). See now the substituted provisions as to compensation in the Landlord and Tenant Act 1954 s 37 (as amended) and LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 758 et seq.

5 See *Re David and Matthews* [1899] 1 Ch 378 at 382 and PARTNERSHIP vol 79 (2008) PARA 213.

6 See the text and note 3 supra.

7 See BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 424. As to personal goodwill see PARA 1209 post.

8 See the Trade Marks Act 1994 s 24 (1) and TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 129.

9 See *ibid* s 24 (6) and TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 129.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/1. SCOPE AND DESCRIPTION/(3) GOODWILL/1209. Personal and local goodwill.

1209. Personal and local goodwill.

A distinction has been drawn between personal goodwill, which is merely the advantage of the recommendation of the owner of a business and of the use of his name, and local goodwill, which is attached to premises¹, and must be taken into account in calculating the value of such premises².

There may be a goodwill attached to a business which depends upon personal relations between the individual who carries it on and his clients or customers, such as the business of a stockbroker³, or a solicitor⁴, or notary⁵, or a surgeon or doctor⁶, or a dentist⁷; and, even though a successor may not use the old name, it may be an advantage of appreciable value merely to be a successor⁸, although in some cases such goodwill may be so worthless as to be unsaleable⁹.

Goodwill, whether local or personal, has always the attribute of local situation in a degree more or less defined¹⁰. It is not at all clear, however, under what circumstances, if any, a foreign trader can acquire goodwill in England and Wales without some sort of user there¹¹.

- 1 *Re Thomas, ex p Thomas* (1841) 2 Mont D & De G 294 at 296 (purely personal goodwill does not pass to a bankrupt's assignee); *Potter v IRC* (1854) 10 Exch 147 at 157 per Pollock CB; *Llewellyn v Rutherford* (1875) LR 10 CP 456 at 469 per Brett J; *Cooper v Metropolitan Board of Works* (1883) 25 ChD 472, CA; *IRC v Muller & Co's Margarine Ltd* [1901] AC 217 at 231, HL per Lord Brampton. The earlier tendency was to recognise only the existence of local goodwill: see the cases referred to in PARA 1206 note 1 ante and in note 10 infra.
- 2 *Edwards v Edwards* (1837) 1 Jur 654 (goodwill must be included in calculating the value of the reversion of a public house); *Cartwright v Sculcoates Union* [1900] AC 150, HL. An attempt to divide the value attributable to goodwill into three parts, the first consisting of customers who on a change in the proprietorship of a business would remain attached to the premises ('cat goodwill'), the second of customers who would follow the previous occupier ('dog goodwill') and the third of customers who would desert both the premises and the occupier ('rat goodwill'), has been regarded as an over simplification: see *Whiteman Smith Motor Co Ltd v Chaplin* [1934] 2 KB 35 at 49, DC per Maugham LJ who also referred to 'rabbit goodwill' to indicate the customers who come simply from propinquity to the premises; *Mullins v Wessex Motors Ltd* [1947] 2 All ER 727, CA; *Fredk Smith Ltd v IRC* (1950) 29 TC 419, CA; *Kirby (Inspector of Taxes) v Thorn EMI plc* [1988] 2 All ER 947, [1988] 1 WLR 445, CA.
- 3 *Hill v Fearis* (1905) 1 Ch 466, doubting *Wilson v Williams* (1892) 29 LR Ir 176, if and in so far as it decided that there could be no goodwill in such a case; and see note 8 infra.
- 4 *Chappell v Griffith* (1885) 53 LT 459 (where it was assumed that there could be goodwill of such a business); *Burchell v Wilde* [1900] 1 Ch 551 at 562, CA per Lindley MR (similar assumption). It was, however, thought by Lord Chelmsford LC in *Austen v Boys* (1858) 2 De G & J 626 at 635 that there could be no goodwill of a solicitor's practice, and the term 'goodwill' was there held to mean merely a partner's interest in the business until the end of the partnership term. In *Arundell v Bell* (1883) 52 LJ Ch 537 at 538, CA, Jessel MR took a similar view; but on this point at 539, 540 respectively, Baggallay LJ and Lindley LJ were doubtful; and in *Spicer v James* (1830) (unreported, but referred to in *Smale v Graves* (1850) 3 De G & Sm 706), a bill by creditors of a deceased attorney for an account of the profits of a person who had conducted the business with the widow's consent was dismissed on the ground that the goodwill of an attorney's business was of a personal character and could not form assets in an administration suit. See generally LEGAL PROFESSION.
- 5 *Re Manchester Notaries, Knott v Boutflower* [1922] WN 199, Court of Faculties.
- 6 *Farr v Pearce* (1818) 3 Madd 74; cf *May v Thomson* (1882) 20 ChD 705 at 718, CA per Jessel MR; *Corbin v Stewart* (1911) 28 TLR 99 at 100. It is unlawful for a medical practitioner undertaking to provide general medical services under the National Health Service Act 1977 to sell or buy the goodwill of a medical practice: see s 54 (1), Sch 10 and HEALTH SERVICES vol 54 (2008) PARA 273 et seq.
- 7 *Smale v Graves* (1850) 3 De G & Sm 706.
- 8 *Hill v Fearis* [1905] 1 Ch 466, doubting *Wilson v Williams* (1892) 29 LR Ir 176; but in general it is no fraud on the public to trade under the name of a person who is no longer connected with the business (*Lewis v Langdon* (1835) 7 Sim 421 at 424), although it has been thought to be otherwise in the case of a solicitor (see *Arundell v Bell* (1883) 52 LJ Ch 537, CA; *Thornbury v Beville* (1842) 1 Y & C Ch Cas 554 at 565; LEGAL PROFESSIONS).
- 9 *Wilson v Williams* (1892) 29 LR Ir 176, as explained in *Hill v Fearis* [1905] 1 Ch 466; and quare whether *Wilson v Williams* supra is not overruled by *Trego v Hunt* [1896] AC 7, HL. See also *Steuart v Gladstone* (1879) 10 ChD 656, CA; *A-G v Boden* [1912] 1 KB 539 at 560. Whether goodwill exists or not is, apparently, a pure question of fact: *A-G v Boden* supra at 559 per Hamilton J.
- 10 *IRC v Muller & Co's Margarine Ltd* [1901] AC 217 at 224, HL per Lord Macnaghten, at 228 per Lord James of Hereford, at 234 per Lord Robertson and at 235, 236 per Lord Lindley. However, Lord Brampton at 230 apparently restricted the statement in the text to cases where the goodwill is attached to certain premises, and Lord James of Hereford at 228 suggested that there might be cases where a goodwill had no local situation. In ascertaining the locality of goodwill of trade carried on in certain premises, the goodwill is not severable from those premises: see at 231 per Lord Brampton. Cf *Ricket v Directors etc of Metropolitan Rly Co* (1867) LR 2 HL 175 at 204; but see *IRC v Muller & Co's Margarine Ltd* supra at 233 per Lord Robertson. As to the effect of a transfer of goodwill under a law passed by a foreign government see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 422; and as to the location of goodwill for inheritance tax purposes see INHERITANCE TAXATION vol 24 (Reissue) PARA 604.
- 11 *SA des Anciens Etablissements Panhard et Levassor v Panhard Levassor Motor Co Ltd* [1901] 2 Ch 513; *Poirot v Jules Poirot Ltd and Nash* (1920) 37 RPC 177; *Sheraton Corp of America v Sheraton Motels Ltd* [1964] RPC 202; *Alain Bernardin et Cie v Pavilion Properties Ltd* [1967] RPC 581; *Amway Corp v Eurway International Ltd* [1974] RPC 82; *Globelegance BV v Sarkissian* [1974] RPC 603; *Maxim's Ltd v Dye* [1978] 2 All ER 55, [1977] 1 WLR 1155; *C & A Modes v C & A (Waterford) Ltd* [1978] FSR 126 (Ir SC); *Metric Resources Corp v Leasemetrix Ltd* [1979] FSR 571.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/1. SCOPE AND DESCRIPTION/(3) GOODWILL/1210. Existence of covenants in restraint of trade.

1210. Existence of covenants in restraint of trade.

An important element in estimating the value of goodwill is the existence or non-existence of covenants restraining the vendor of, or partners or employees in, the business from competing with it¹. The benefit of those covenants passes as incident to the goodwill².

1 *Kennedy v Lee* (1817) 3 Mer 441 at 452 per Lord Eldon; *IRC v Angus* (1889) 23 QBD 579 at 596, CA per Lindley LJ; *Townsend v Jarman* [1900] 2 Ch 698 at 703; and see *A-G v Boden* [1912] 1 KB 539 at 560.

2 *Jacoby v Whitmore* (1883) 49 LT 335, CA; *Showell v Winkup* (1889) 60 LT 389; *Townsend v Jarman* [1900] 2 Ch 698 at 703; *Automobile Carriage Builders Ltd v Sayers* (1909) 101 LT 419. Such covenants will not, however, be implied: see *Trego v Hunt* [1896] AC 7, HL and COMPETITION vol 18 (2009) PARA 375. As to the extent to which such covenants are unenforceable as conflicting with public policy see *Nordenfelt v Maxim Nordenfelt Guns and Ammunition Co Ltd* [1894] AC 535, HL; COMPETITION vol 18 (2009) PARA 377; *Whitehill v Bradford* [1952] Ch 236 at 245, 246, [1952] 1 All ER 115 at 117, CA per Evershed MR; and *Macfarlane v Kent* [1965] 2 All ER 376, [1965] 1 WLR 1019. See also PARTNERSHIP vol 79 (2008) PARA 151.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/2. POSSESSION/(1) MEANING OF 'POSSESSION'/1211. Physical and legal possession distinguished.

2. POSSESSION

(1) MEANING OF 'POSSESSION'

1211. Physical and legal possession distinguished.

'Possession' is a word of ambiguous meaning¹, and its legal senses do not coincide with the popular sense². Its meaning depends upon the context in which it is used³. In English law it may be treated not merely as a physical condition protected by ownership, but as a right in itself⁴. The word 'possession'⁵ may mean effective, physical or manual control, or occupation, evidenced by some outward act, sometimes called de facto possession or detention⁶ as distinct from a legal right to possession⁷. This is a question of fact rather than of law⁸.

'Possession' may mean legal possession: that possession which is recognised and protected as such by law. The elements normally characteristic of legal possession are an intention of possessing together with that amount of occupation or control of the entire subject matter of which it is practically capable and which is sufficient for practical purposes to exclude strangers from interfering⁹. Thus, legal possession is ordinarily associated with de facto possession; but legal possession may exist without de facto possession, and de facto possession is not always regarded as possession in law¹⁰. A person who, although having no de facto possession, is deemed to have possession in law is sometimes said to have constructive possession¹¹.

1 *Bourne v Fosbrooke* (1865) 18 CBNS 515 at 526; *Lyell v Kennedy* (1887) 18 QBD 796 at 813, CA per Fry LJ. For common phrases including the word 'possession' see PARA 1214 post.

2 Pollock and Wright's Possession in the Common Law 1.

3 *Towers & Co Ltd v Gray* [1961] 2 QB 351 at 361, [1961] 2 All ER 68 at 71, DC per Lord Parker; approved (inter alios) by Lord Pearce in *Warner v Metropolitan Police Comr* [1969] 2 AC 256 at 304, [1968] 2 All ER 356 at 387, HL; by Fisher J in *Hambleton v Callinan* [1968] 2 QB 427 at 432, [1968] 2 All ER 943 at 945, DC; by

Ashworth J in *Woodage v Moss* [1974] 1 All ER 584 at 588, [1974] 1 WLR 411 at 415, DC; by May J giving the judgment of the court in *Sullivan v Earl of Caithness* [1976] QB 966 at 969, [1976] 1 All ER 844 at 846, DC; by Stocker LJ in *Hall v Cotton* [1987] QB 504 at 510, [1986] 3 All ER 332 at 335, DC; and by Nicholls LJ giving the judgment of the court in *Re Atlantic Computers Systems plc* [1992] Ch 505 at 531, [1992] 1 All ER 476 at 492, CA. It has been held that it should be given a popular, not a narrow, construction in the context of the Public Health Act 1875 s 117 (repealed) (*Webb v Baker* [1916] 2 KB 753, DC) and in the Food and Drugs Act 1938 s 24 (repealed) (*Oliver v Goodger* [1944] 2 All ER 481, DC).

4 Pollock and Wright's Possession in the Common Law 19.

5 For the meaning of 'apparent possession' for the purposes of the Bills of Sale Acts see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 1851, 1853. The expression 'man in possession' in the Distress (Costs) Act 1817 s 1, Schedule, means a man in possession of the goods seized but not necessarily in possession of them on the premises when they were seized: *Scott v Denton* [1907] 1 KB 456, DC. For the meaning of 'adverse possession of land' see *Bligh v Martin* [1968] 1 All ER 1157, [1968] 1 WLR 804 and LIMITATION PERIODS vol 68 (2008) PARA 1078 et seq.

The meaning of 'possession' for the purposes of various enactments has been considered, eg in the context of the possession of drugs (*Hambleton v Callinan* [1968] 2 QB 427, [1968] 2 All ER 943, DC; *Warner v Metropolitan Police Comr* [1969] 2 AC 256, [1968] 2 All ER 356, HL; *R v Hussain* [1969] 2 QB 567, [1969] 2 All ER 1117, CA; *R v Buswell* [1972] 1 All ER 75, [1972] 1 WLR 64, CA; *DPP v Brooks* [1974] AC 862, [1974] 2 All ER 840, PC; *R v Ashton-Rickardt* [1978] 1 All ER 173, [1978] 1 WLR 37, CA; *R v Russell* (1984) 81 Cr App Rep 315, CA; *R v Martindale* [1986] 3 All ER 25, [1986] 1 WLR 1042, CA), or of firearms (*Sullivan v Earl of Caithness* [1976] QB 966, [1976] 1 All ER 844, DC; *Hall v Cotton* [1987] QB 504, [1986] 3 All ER 332, DC; *R v McNamara* (1988) 87 Cr App Rep 246, CA), or of goods to which a false trade description was applied (*Towers & Co Ltd v Gray* [1961] 2 QB 351, [1961] 2 All ER 68, DC), or of a business holding required for the purposes of the Landlord and Tenant Act 1954 s 30 (1) (f) (see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARAS 741-744) (*Heath v Drown* [1973] AC 498, [1972] 2 All ER 561, HL), or in connection with property in the possession of the police under the Powers of Criminal Courts Act 1973 s 43 (1) (as substituted) (see now SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 481) (*R v Hinde* [1977] RTR 328, CA); or the power under the Magistrates' Courts Act 1980 s 125 (3) to arrest when a warrant is not in the constable's possession at the time (*De Costa Small v Kirkpatrick* (1978) 68 Cr App Rep 186, DC) or in relation to the possession of weighing or measuring equipment under the Weights and Measures Act 1963 s 16 (1) (repealed: see now the Weights and Measures Act 1985 s 17 (1)) (*Bellerby v Carle* [1983] 2 AC 101, [1983] 1 All ER 1031, HL); or in relation to repossession of goods in a company's possession under the Insolvency Act 1986 s 11 (3) (c); or in relation to the Factors Act 1889 (*Beverley Acceptances Ltd v Oakley* [1982] RTR 417, CA; or in relation to the Sale of Goods Act 1979 (*Forsythe International (UK) Ltd v Silver Shipping Co Ltd, The Saetta* [1994] 1 All ER 851).

6 See *Hall v Cotton* [1987] QB 504, [1986] 3 All ER 332, DC (where a distinction was drawn between 'custodial possession' and 'proprietary possession'). A shopkeeper is not necessarily in de facto possession of bank notes which are dropped by a stranger in a part of the shop frequented by customers and picked up by a customer: *Bridges v Hawkesworth* (1851) 21 LJQB 75; *Hannah v Peel* [1945] KB 509, [1945] 2 All ER 288; and see PARA 1220 post; and BAILMENT vol 3(1) (2005 Reissue) PARAS 11-14.

7 The contrast is illustrated in relation to statutory use of the phrase 'actual possession' in eg *Holt v Dawson* [1940] 1 KB 46 at 51, [1939] 3 All ER 635 at 638, CA ('actual possession' for the purposes of the decontrol of premises subject to the Rent Acts). As to 'possession' as synonymous with a legal right to possession see PARA 1213 post.

8 Such use and enjoyment as the nature of the subject matter admits of is good evidence of possession: *Harper v Charlesworth* (1825) 4 B & C 574; and see Pollock and Wright's Possession in the Common Law 11 et seq, 38. De facto possession of goods may be obvious where physical control is demonstrable. It is a question of fact. In the capture of wild animals, however, it may not always be clear when complete possession is taken. Thus, so long as a seine net is open, complete possession has not been taken of the fish: *Young v Hichens* (1843) 6 QB 606; and see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 839. As to the usage relating to the capture of whales see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 1070 et seq; and as to the property in wild animals see ANIMALS vol 2 (2008) PARAS 710-716.

9 *The Tubantia* [1924] P 78 at 89, 90 per Duke P. In *R v McNamara* (1988) 87 Cr App Rep 246 at 250, 251, CA Lord Lane LCJ in a criminal case, explaining *Warner v Metropolitan Police Comr* [1969] 2 AC 256, [1968] 2 All ER 356, HL, stated that (1) a man does not have possession of something which has been put into his pocket or into his house without his knowledge; (2) a mere mistake as to the quality of a thing under the accused's control is not enough to prevent his being in possession; (3) if the accused believes that the thing is of a wholly different nature from that which in fact it is, then the result would be otherwise; and (4) in the case of a container or a box, the accused's possession of the box leads to the strong inference that he is in possession of the contents inside the box; but, if the contents are quite different in kind from what he believed, he is not in possession of them. See also Pollock and Wright's Possession in the Common Law 16 et seq.

10 Pollock and Wright's Possession in the Common Law 26. Legal possession must be conceived as a definite right or interest to which legal incidents are attached, and which exists independently of the true owner's title: Pollock and Wright's Possession in the Common Law 17, 19. See also 7 Holdsworth's History of English Law 459-461.

11 The term 'constructive possession' is, however, more properly applicable to possession in the sense of 'right to possess' (see PARA 1213 post) when the so-called possessor has neither de facto nor legal possession (see PARA 1216 post), and its strict meaning would seem to be even more limited: see Pollock and Wright's Possession in the Common Law 25, 27, 145 and TORT. Thus, where a seller or carrier agrees to hold as agent for the buyer, the buyer has constructive possession: see *Stoveld v Hughes* (1811) 14 East 308; *Jackson v Nichol* (1839) 5 Bing NC 508; and see *Madras Official Assignee v Mercantile Bank of India Ltd* [1935] AC 53 at 58, 59, PC (pledge by constructive delivery); *Wrightson v McArthur and Hutchisons (1919) Ltd* [1921] 2 KB 807 at 817 (whether delivery of a key gives 'constructive' possession). See also *Four Point Garage Ltd v Carter* [1985] 3 All ER 12; *Giles v Curtis* (1985) unreported (owner handed over key of car to an Automobile Association patrolman for recovery of car under recovery service; possession held to have been transferred from owner to the Automobile Association); CARRIAGE AND CARRIERS vol 7 (2008) PARA 770; the Sale of Goods Act 1979 s 29; SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 165 et seq; and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 330.

UPDATE

1211 Physical and legal possession distinguished

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 5--1973 Act s 43(1) (as substituted) now Powers of Criminal Courts (Sentencing) Act 2000 s 143(1), (2), (4) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 481).

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/2. POSSESSION/(1) MEANING OF 'POSSESSION'/1212. Nature of legal possession.

1212. Nature of legal possession.

The normal case of legal possession is where the true owner has de facto possession and intends to exclude unauthorised interference. In this instance de facto and legal possession are associated in the same person¹. A bailee also has de facto and legal possession during the bailment².

Legal possession of an article may remain in the owner even where he has lost or abandoned physical possession of it or otherwise ceased to exercise effective control over it, as, for example, where he has lost a jewel in his house, left his implements of husbandry in a field with the intention of returning, or even, perhaps, where he has abandoned the article altogether, provided that no one else has taken de facto possession³.

The owner has legal possession of an article temporarily in the custody of his employee⁴, except where the employee receives an article from a third person to hold for his employer, in which case the employee holds as bailee and has legal possession⁵. In the same way the owner retains the legal possession where the article is in the custody of a guest or licensee⁶.

A thief may, however, have legal possession of stolen goods, the true owner having merely the right to possession, on the principle that possession in fact with the manifest intention to exercise sole dominion imports possession in law⁷.

1 Pollock and Wright's Possession in the Common Law 17, 41. Legal possession is not the same as occupation. Occupation is a matter of fact and exists only where there is a sufficient measure of control to prevent strangers from interfering: *Newcastle City Council v Royal Newcastle Hospital* [1959] AC 248 at 255, [1959] 1 All ER 734 at 735, 736, PC per Lord Denning; *Stubbings v Beaconsfield Justices* (1987) 54 P & CR 327, CA.

2 See BAILMENT vol 3(1) (2005 Reissue) PARA 1 et seq.

3 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 283 note 5, 284 note 2, 289 note 1; Pollock and Wright's Possession in the Common Law 19, 123, 124. See further PARAS 1216, 1219, 1220, 1234 post.

4 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 289 et seq.

5 Pollock and Wright's Possession in the Common Law 18, 60, 130, 138; and see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 289-290; *Fowler v Lock* (1872) LR 7 CP 272, Ex Ch; and EMPLOYMENT vol 39 (2009) PARA 6.

6 Pollock and Wright's Possession in the Common Law 58, 140.

7 Pollock and Wright's Possession in the Common Law 20.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/2. POSSESSION/(1) MEANING OF 'POSSESSION'/1213. Right to possession.

1213. Right to possession.

The word 'possession' is sometimes used inaccurately as synonymous with the right to possession¹. This right to possess is a normal incident of ownership, but an owner's right to possess may be temporarily suspended, as, for example, where he has bailed the goods to a bailee for a term, and, conversely, the right to possess may exist temporarily in one who is not the owner, for example a bailee. Moreover, a right to possess may be subject to the superior right of one who has a better title. For example, a finder's right to possess does not avail against that of the true owner².

1 Cf para 1211 text and notes 6, 9 ante.

2 Pollock and Wright's Possession in the Common Law 25, 27, 146. As to the rights of an owner, bailee or finder see PARAS 1216-1218, 1220 post. The importance of the distinction between legal possession and the right to possession derives from the old forms of action, trespass and trover. In order to bring trespass it was necessary to prove a wrong to the plaintiff's possession, but for trover one was required to establish an immediate right to possess. Accordingly, an owner not in possession could not ordinarily sue a wrongdoer in trespass, although he might sue in trover on proof of his right to possession. See further Pollock and Wright's Possession in the Common Law 91 et seq; 7 Holdsworth's History of English Law 402 et seq. As to conversion of goods, also called 'trover' (see the Torts (Interference with Goods) Act 1977 s 1 (a)), and trespass to goods see TORT vol 45(2) (Reissue) PARA 542 et seq.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/2. POSSESSION/(1) MEANING OF 'POSSESSION'/1214. Common phrases including the word 'possession'.

1214. Common phrases including the word 'possession'.

The word 'possession' is used in various contexts and phrases, for example, in the phrase 'actual possession'¹, or 'to take possession'², or 'interest in possession'³, or 'estate in possession'⁴, or 'entitled in possession'⁵, although it is inaccurate to describe an interest in expectancy as falling into possession⁶. The meaning of 'possession' or 'vacant possession' in a contract for the sale of land is considered elsewhere⁷.

1 The word 'actual' seems to have been added by conveyancers to the words 'possession' or 'receipt of the rent and profits' in order to exclude any suggestion that a title in reversion may be included: see *Re Neeld, Carpenter v Inigo-Jones* [1960] Ch 455 at 474, [1960] 2 All ER 33 at 43 (revsd on another point [1962] Ch 643, [1962] 2 All ER 335, CA), citing *Re Petres' Settlement Trusts, Legh v Petre* [1910] 1 Ch 290 at 296. As to the contrast between 'actual possession' and a right to possession see PARA 1211 note 7 ante.

2 In the absence of a clear context the words 'take possession' are suitable only in reference to physical things: *Wallrock v Equity and Law Life Assurance Society* [1942] 2 KB 82 at 85, [1942] 1 All ER 510 at 512, CA (where the phrase was considered inapt to apply to a statutory assignment of a chose in action). The meaning of 'taking possession' in the RIBA standard form of contract was considered in *English Industrial Estates Corp'n v George Wimpey & Co Ltd* [1973] 1 Lloyd's Rep 118, CA.

3 The contrast in such phrases is between an interest in reversion or remainder and an interest in possession: see *Re Morgan* (1883) 24 ChD 114 at 116. Cf *Re Atkinson, Atkinson v Bruce* (1886) 31 ChD 577 at 580, CA. For the meaning of 'interest in possession' in relation to inheritance tax see INHERITANCE TAXATION vol 24 (Reissue) PARAS 479-485. As to whether a beneficiary's interest is an interest in possession for the purposes of inheritance tax see *Pearson v IRC* [1981] AC 753, [1980] 2 All ER 479, HL.

4 In regard to an estate tail this may mean that the estate is vested: see *Martelli v Holloway* (1872) LR 5 HL 532.

5 Such phrases as 'when he shall be entitled to the possession or the receipt of the rents and profits', applied in a trust instrument to a number of persons taking in succession, refer to the falling into possession of the several life interests and not to the actual unincumbered beneficial enjoyment of them: see *Earl of Lonsdale v Lowther* [1900] 2 Ch 687 at 695.

6 See eg the Finance Act 1894 s 7 (6) (repealed), in relation to estate duty (now replaced by inheritance tax: see note 3 supra), which refers to an interest in expectancy falling into possession; but an interest in expectancy is itself always in possession, and what falls into possession is the property, not the interest: see *Fry v IRC* [1959] Ch 86 at 102, [1958] 3 All ER 90 at 93, CA per Romer LJ.

7 See *Cumberland Consolidated Holdings Ltd v Ireland* [1946] KB 264 at 269-271, [1946] 1 All ER 284 at 286, 287, CA and SALE OF LAND. Cf the definition of 'possession' in the Law of Property Act 1925 s 205 (1) (xix): see SALE OF LAND vol 42 (Reissue) PARA 330.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/2. POSSESSION/(2) POSSESSION OF DIFFERENT PERSONS/1215. Ownership qualified by parting with possession.

(2) POSSESSION OF DIFFERENT PERSONS

1215. Ownership qualified by parting with possession.

The ownership or property in a corporeal chattel may be either absolute or qualified. It is absolute where a person has solely and exclusively the right to and also the occupation of the chattel, so that it cannot be transferred from him or cease to be his without his own act or default. Thus a person may have absolute property in all inanimate things and vegetable productions when severed from the plant or ground¹, and of tame animals². Rights in a chattel that do not amount to absolute ownership, as defined previously, are sometimes described as constituting a qualified property in it. This may occur in different ways, for example, where the owner of a chattel has bailed it, he may be said to have a limited or qualified property in it³, as indeed may the bailee⁴. In the case of bailment, including pledge⁵, the bailor is often said to

have the general property in the goods, while the bailee has a special property in them⁶. Further, in relation to possession it is noteworthy that a person's property or ownership may be 'qualified' because it is such that it continues only so long as he retains possession of the subject matter. Thus wild animals may be the subject of qualified or limited property, either on account of confinement or their inability to escape from the possessor's land or because the possessor has been granted an exclusive privilege of capture⁷. It has been said that air and water are also the subjects of qualified property, the property in them ceasing the instant they are out of possession⁸.

1 2 BI Com (14th Edn) 389; and see AGRICULTURAL LAND vol 1 (2008) PARAS 370-372.

2 2 BI Com (14th Edn) 390; and see ANIMALS vol 2 (2008) PARA 709.

3 2 BI Com (14th Edn) 395, 396.

4 2 BI Com (14th Edn) 395, 396. See *John George Leigh (trading as Moor Lane Video) v Customs and Excise Comrs* [1990] VATTR 59.

5 See PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARA 3.

6 See eg *Browning v Handiland Group Ltd and Bush Investments Trust Ltd* (1976) 35 P & CR 345; *Re Bond Worth Ltd* [1980] Ch 228, [1979] 3 All ER 919; *Parker v British Airways Board* [1982] QB 1004, [1982] 1 All ER 834, CA; *Clough Mill Ltd v Martin* [1984] 3 All ER 982, [1985] 1 WLR 111, CA (where reference was made to the definition of 'property' in the Sale of Goods Act 1979 s 61 (1): see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 27). See, however, the observation of Lord Brandon in *Chabbra Corp'n Pte Ltd v Jag Shakti (Owners), The Jag Shakti* [1986] AC 337, [1986] 1 All ER 480, PC that a pledgee has a special property but a simple bailee has only possession or a right to possession.

7 2 BI Com (14th Edn) 391-395. See also ANIMALS vol 2 (2008) PARAS 710-716.

8 2 BI Com (14th Edn) 395. It would seem difficult to find support for Blackstone's further assertion that one can have property in fire and light, save that an easement of light may attach to land: see EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) PARAS 197-251. Cf *Bentley Bros v Metcalf & Co* [1906] 2 KB 548, CA (sale of motive power).

UPDATE

1215 Ownership qualified by parting with possession

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/2. POSSESSION/(2) POSSESSION OF DIFFERENT PERSONS/1216. Possession by owner.

1216. Possession by owner.

An owner of goods enjoying the full rights of ownership has de facto possession, or use and enjoyment¹. Conversely, possession is prima facie evidence of title².

The right to have legal and de facto possession is a normal but not necessary incident of ownership³. Such a right may exist with, or apart from, de facto or legal possession, and in different persons at the same time in virtue of different proprietary rights⁴. Thus, when an owner has been wrongfully dispossessed of his goods by theft, or has lost them, he retains the right to possess them⁵; but, where he has bailed them for a term or by way of pledge, this right

is temporarily suspended⁶. Similarly, an executor immediately on the testator's death and before probate has constructive possession of the testator's goods⁷.

Where de facto possession is undetermined, as, for example, where it is equally consistent with the facts that possession may be in one person or another, legal possession attaches to the right to possess⁸.

1 See 2 Bl Com (14th Edn) 389; *Fouldes v Willoughby* (1841) 8 M & W 540 at 548; *Burroughes v Bayne* (1860) 5 H & N 296. As to rights of ownership without possession see PARA 1228 post.

2 *The Winkfield* [1902] P 42 at 60, CA; and see PARA 1222 post.

3 2 Saund 47bn; Blackburn's Contract of Sale (3rd Edn) 339, 340; *Bloxam v Sanders* (1825) 4 B & C 941.

4 Pollock and Wright's Possession in the Common Law 27, 146.

5 Pollock and Wright's Possession in the Common Law 27. As to whether a person with a mere right to possession can maintain trespass see Pollock and Wright's Possession in the Common Law 151 et seq and TORT vol 45(2) (Reissue) PARA 662 et seq.

6 Pollock and Wright's Possession in the Common Law 93, 145, 166. See also *Nyberg v Handelaar* [1892] 2 QB 202, CA and BAILMENT vol 3(1) (2005 Reissue) PARAS 88-91. The position is otherwise if the bailment is revocable at the bailor's will: see BAILMENT vol 3(1) (2005 Reissue) PARA 88.

7 *Tharpe v Stallwood* (1843) 5 Man & G 760; and see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARAS 29-31.

8 See PARA 1221 text and note 5 post. 'Where no one else is in possession, possession follows title': *Newcastle City Council v Royal Newcastle Hospital* [1959] AC 248 at 255, [1959] 1 All ER 734 at 736, PC per Lord Denning; *Windeler v Whitehall* [1990] 2 FLR 505 at 517 per Millett J.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/2. POSSESSION/(2) POSSESSION OF DIFFERENT PERSONS/1217. Possession by co-owners.

1217. Possession by co-owners.

Where two or more persons are concurrent owners of the same property¹, each ordinarily has both the possession and the right to possession of the whole contemporaneously with the others². Hence one of two co-owners cannot ordinarily maintain an action against the other for the common chattel while it is in the other's possession³. Co-ownership is, however, no defence to an action founded on conversion or trespass to goods where the defendant without the authority of the other co-owners destroys the goods or disposes of the goods in a way giving a good title to the entire property in the goods, or otherwise does anything equivalent to the destruction of the others' interest in the goods⁴, or purports to dispose of the goods in a way which would give a good title to the entire property in the goods if he was acting with the authority of all co-owners of the goods⁵. In the case of joint ownership, the joint owners have both single possession and a single joint right to possess. Owners in common have single possession, but several rights to possess⁶.

1 After 31 December 1925 the interests of co-owners in land will take effect as interests in the proceeds of sale of that land under a trust for sale, but this does not appear to alter their rights to possession: see the Law of Property Act 1925 ss 34-36, Sch 1 Pt IV; *Bull v Bull* [1955] 1 QB 234, [1955] 1 All ER 253, CA; *Jones v Jones* [1977] 2 All ER 231, [1977] 1 WLR 438, CA; and REAL PROPERTY. As to ownership by co-owners see PARA 1243 et seq post; and as to disputes between co-owners of a ship see SHIPPING AND MARITIME LAW vol 93 (2008) PARAS 106-108.

2 Littleton's Tenures ss 281, 321; Pollock and Wright's Possession in the Common Law 212; *Bull v Bull* [1955] 1 QB 234, [1955] 1 All ER 253, CA; *Williams & Glyn's Bank v Boland* [1981] AC 487, [1980] 2 All ER 408, HL.

However, the right to possession may, it seems, by agreement be exclusively in one of several co-owners: *Nyberg v Handelaar* [1892] 2 QB 202, CA. See also *Re Casey's Patents, Stewart v Casey* [1892] 1 Ch 104 at 108, CA per Romer J.

3 *Harper v Godsell* (1870) LR 5 QB 422 at 428 per Blackburn J; Littleton's Tenures s 323. According to Littleton (see Littleton's Tenures s 323), if one co-owner is dispossessed by the other, he has no remedy but by self-help. As to theft by a partner or co-owner see *R v Bonner* [1970] 2 All ER 97n, [1970] 1 WLR 838, CA and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 289; and as to the application of the Theft Act 1968 in relation to the parties to a marriage and to property belonging to the wife or husband, whether or not by reason of an interest derived from the marriage, see s 30 (as amended) and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 289.

4 Torts (Interference with Goods) Act 1977 s 10 (1) (a). Section 10 (1) (a) is by way of restatement of existing law so far as it relates to conversion: s 10 (2). See also TORT vol 45(2) (Reissue) PARAS 604, 664.

5 Ibid s 10 (1) (b), extending the pre-existing law. See also TORT vol 45(2) (Reissue) PARAS 604, 664.

6 Littleton's Tenures ss 311, 314, 321; Pollock and Wright's Possession in the Common Law 21, 27, 212.

UPDATE

1217 Possession by co-owners

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/2. POSSESSION/(2) POSSESSION OF DIFFERENT PERSONS/1218. Possession by bailee.

1218. Possession by bailee.

A bailee has either actual or constructive possession of the goods bailed as well as the right to possess them, but as against the bailor his rights are limited in duration by his duty to redeliver the goods to the bailor or his nominee on the determination of the bailment¹.

1 See BAILMENT vol 3(1) (2005 Reissue) PARAS 1-3, 29-33, 58-62. As to the bailee's rights to sue a third person for conversion or in trespass see BAILMENT vol 3(1) (2005 Reissue) PARA 89; and see TORT vol 45(2) (Reissue) PARA 569. The temporary custody of his employer's property by an employee in charge must be distinguished from ordinary bailment: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 284, 289; *Fowler v Lock* (1872) LR 7 CP 272, Ex Ch; EMPLOYMENT vol 39 (2009) PARA 6. The employee's custody apparently amounts merely to a licence to deal with the property in a certain way: Pollock and Wright's Possession in the Common Law 58-60, 130, 138; *Kerr v Phyn* 1893 30 SLR 607. As to the bailor's right to sue a third person for conversion or in trespass, or for injury to his reversionary interest, see BAILMENT vol 3(1) (2005 Reissue) PARA 88; and TORT; and as to an auctioneer's possession see *Davis v Artinstall* (1880) 49 LJ Ch 609 and AUCTION vol 2(3) (Reissue) PARAS 226-231.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/2. POSSESSION/(2) POSSESSION OF DIFFERENT PERSONS/1219. Possession by trespasser.

1219. Possession by trespasser.

The foundation of the action of trespass is a wrongful interference, whether or not amounting to actual ouster, with the possession of another¹. The trespasser does not acquire possession of

chattels unless there is an asportation or carrying away². When a trespasser so obtains possession, his possession, although wrongful, is protected by law as a rightful possession against all save the person dispossessed and any who can show a superior title³.

1 *Johnson v Diprose* [1893] 1 QB 512, CA; *The Tubantia* [1924] P 78. See further TORT vol 45(2) (Reissue) PARA 659 et seq.

2 Pollock and Wright's *Possession in the Common Law* 84, 141, 215 et seq. The meaning of 'appropriation' under the Theft Act 1968 s 3 is not so limited: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 284.

3 See PARA 1222 text and note 2 post; and TORT.

UPDATE

1219-1220 Possession by trespasser, Possession by finder

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/2. POSSESSION/(2) POSSESSION OF DIFFERENT PERSONS/1220. Possession by finder.

1220. Possession by finder.

The finder of a chattel acquires no rights over it unless it has been abandoned or lost and he takes it into his care and control¹. Even if such a finder so takes it, he acquires very limited rights over it if he does so with dishonest intent or in the course of trespassing². Subject to the above, the finder of a chattel³, whilst not acquiring any absolute property or ownership in the chattel, acquires a right to keep it against all but the true owner or those in a position to claim through the true owner or one who can assert a prior right to keep the chattel which was subsisting at the time when the finder took the chattel into his care and control⁴. Unless otherwise agreed, any servant or agent who finds a chattel in the course of his employment or agency and not wholly incidentally or collaterally thereto and who takes it into his care and control does so on behalf of his employer or principal who acquires a finder's rights to the exclusion of the actual finder⁵.

An occupier of land or a building has rights superior to those of a finder over chattels in or attached to the land or building, as the case may be, whether or not in either case the occupier is aware of the presence of the chattel⁶. An occupier of a building also has rights superior to those of a finder over chattels on or in, but not attached to, that building if, but only if, before the chattel is found, he has manifested an intention to exercise control over the building and the things which may be on or in it⁷. The manifestation of intention may be express or implied from the circumstances including, in particular, the circumstance that the occupier manifestly accepts or is obliged by law to accept liability for chattels lost on his premises, for example an innkeeper's or carrier's liability⁸. An 'occupier' of a chattel such as a ship, motor car, caravan or aircraft is treated as if he were the occupier of a building for the above purposes⁸.

The supposed rule that a finder who takes possession of property absolutely abandoned or irretrievably lost by its former owner thereby acquires ownership⁹ is not applicable as against the Crown or against persons who have acquired franchises by grant or prescription in respect

of chattels of which possession has been lost or abandoned in special circumstances, such as treasure trove¹⁰.

1 *Parker v British Airways Board* [1982] QB 1004, [1982] 1 All ER 834, CA.

2 *Parker v British Airways Board* [1982] QB 1004 at 1010, [1982] 1 All ER 834 at 837, CA where Donaldson LJ observed that 'he probably has some title, albeit a frail one because of the need to avoid a free-for-all'. See *Buckley v Gross* (1863) 3 B & S 566 where different views were expressed by Crompton and Blackburn JJ.

3 le including a vessel which has become derelict lying on the bed of the sea outside territorial waters: *Pierce v Bemis, The Lusitania* [1986] QB 384, [1986] 1 All ER 1011.

4 *Armory v Delamirie* (1722) 1 Stra 505 (chimney sweep's boy who found jewel succeeded against jeweller to whom he had offered it for sale, who refused to pay a price acceptable to the boy or to return it); *Cartwright v Green* (1803) 8 Ves 405; *Bridges v Hawkesworth* (1851) 21 LJQB 75 (finder entitled as against occupier to a packet of bank notes found on the floor of a shop); *Hannah v Peel* [1945] KB 509, [1945] 2 All ER 288 (soldier lawfully in a requisitioned house entitled to retain a brooch found by him in a crevice as against the owners of the house who had never occupied it; the Crown made no claim either as occupier or employer); *Moffatt v Kazana* [1969] 2 QB 152, [1968] 3 All ER 271 (neither the finder nor the occupier of the house in which it was found entitled to money which the vendor of a house had hidden therein and forgotten about on sale); *Parker v British Airways Board* [1982] QB 1004, [1982] 1 All ER 834, CA (passenger held entitled to gold bracelet found by him in executive lounge at Heathrow when true owner unknown). See also 7 Holdsworth's History of English Law 449 et seq; *The Winkfield* [1902] P 42 at 55, CA; *Daniel v Rogers* [1918] 2 KB 228 at 234, CA per Scrutton LJ; *The Tubantia* [1924] P 78 at 89. As to when a finder of a chattel is regarded as a bailee, owner or thief, as to finding by a bailee or by a purchaser, and as to rights of a finder against third persons, see BAILMENT vol 3(1) (2005 Reissue) PARAS 11-14; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 283 note 5, 284 note 2; TORT. See also Pollock and Wright's Possession in the Common Law 171-187. As to the acquisition of ownership by a finder see PARA 1234 post.

5 *Parker v British Airways Board* [1982] QB 1004 at 1017, [1982] 1 All ER 834 at 841, CA obiter per Donaldson LJ; *South Staffordshire Water Co v Sharman* [1896] 2 QB 44; *City of London Corp'n v Appleyard* [1963] 2 All ER 834, [1963] 1 WLR 982.

6 *Parker v British Airways Board* [1982] QB 1004, [1982] 1 All ER 834, CA; *South Staffordshire Water Co v Sharman* [1896] 2 QB 44; *City of London Corp'n v Appleyard* [1963] 2 All ER 834, [1963] 1 WLR 982. See also *Elwes v Brigg Gas Co* (1886) 33 ChD 562 (plaintiff, tenant for life in possession, had lawful possession of prehistoric boat embedded in the soil and defendant tenant did not acquire any title by the mere finding against the plaintiff); *Hibbert v McKiernan* [1948] 2 KB 142, [1948] 1 All ER 860, DC. See also *Webb v Ireland and A-G* [1988] IRLM 565. Cf para 1234 post. Under the Environmental Protection Act 1990 s 59 (9) any waste removed in pursuance of s 59 belongs to the authority removing it: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 702.

7 *Parker v British Airways Board* [1982] QB 1004, [1982] 1 All ER 834, CA; *Bridges v Hawkesworth* (1851) 21 LJQB 75; *Hannah v Peel* [1945] KB 509, [1945] 2 All ER 288.

8 *Parker v British Airways Board* [1982] QB 1004, [1982] 1 All ER 834, CA.

9 Pollock and Wright's Possession in the Common Law 124; 7 Holdsworth's History of English Law 495, 496. See also PARAS 1225 note 6, 1236 note 5 post. This alleged rule is inconsistent with Chitty's Prerogatives of the Crown 152, cited with approval by Farwell J in *A-G v British Museum Trustees* [1903] 2 Ch 598 at 608, 609. Appropriating articles found may amount to theft: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 283 note 5, 284 note 2.

10 As to treasure trove see 1 Bl Com (14th Edn) 295, 296 and CROWN PROPERTY vol 12(1) (Reissue) PARA 373; NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1084 et seq; as to estrays, wreck, jetsam, flotsam and ligan see Co Litt 114b; 1 Bl Com (14th Edn) 290-294, 297-299; *Constable's Case* (1601) 5 Co Rep 106a; *A-G v Moore* [1893] 1 Ch 676; *Pierce v Bemis, The Lusitania* [1986] QB 384, [1986] 1 All ER 1011; and see CROWN PROPERTY vol 12(1) (Reissue) PARAS 270-277, 372; SHIPPING AND MARITIME LAW vol 93 (2008) PARAS 112-114.

UPDATE

1219-1220 Possession by trespasser, Possession by finder

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1220 Possession by finder

NOTE 6--See also *Waverley BC v Fletcher* [1995] 4 All ER 756, CA (where a brooch was found using a metal detector on ground where use of detectors was not permitted, owner of ground had superior right to brooch).

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/2. POSSESSION/(3) ACQUISITION OF POSSESSION/1221. Acquisition of possession.

(3) ACQUISITION OF POSSESSION

1221. Acquisition of possession.

Possession of corporeal chattels can be taken by physical contact¹, but contact is not essential where the intention of the parties is that possession is to be acquired². In each case possession depends upon the physical possibility of the possessor dealing with the thing exclusively³.

Where de facto possession is undetermined, the lawful owner may acquire it by entry or occupation⁴. Where two persons claim de facto possession, the title of the one who can prove the right to possess prevails⁵.

1 Thus a person may acquire possession of a coin by taking it from a table on which it is lying: *Cochrane v Moore* (1890) 25 QBD 57 at 71, CA. As to a finder or trespasser acquiring possession by taking see PARAS 1219, 1220 ante. For cases where a licence or authority to take possession is a bill of sale see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1647.

2 Thus possession is acquired by the purchaser of goods stored in a warehouse when the keys are handed over to him by the seller with the intention of transferring possession: see PARA 1254 post and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1627. Cf *Martin v Reid* (1862) 11 CBNS 730 at 734, 735 per Erle CJ and PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARA 13. A mortgagee of personal chattels entitled to possession may acquire possession without physical interference with their use and enjoyment: Pollock and Wright's Possession in the Common Law 79. In point of law possession of goods may be changed by agreement without any physical change in their position or in the position of the person who actually guards them: *Mills v Charlesworth* (1890) 25 QBD 421 at 425, CA per Lindley LJ (revsd on other grounds [1892] AC 231, HL); *Kilpin v Ratley* [1892] 1 QB 582, DC; *Ramsay v Margrett* [1894] 2 QB 18, CA. As to the acquisition of possession by delivery, actual or constructive, see further PARA 1253 post; GIFTS vol 52 (2009) PARAS 237-239, 273-274; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 163-164; as to walking possession by a bailiff under an agreement with a judgment creditor see CIVIL PROCEDURE vol 12 (2009) PARA 1371; and as to the nature of possession acquired by a landlord who impounds goods see DISTRESS vol 13 (2007 Reissue) PARA 1018.

3 *The Tubantia* [1924] P 78 at 89 (possession by salvors).

4 *Jones v Chapman* (1849) 2 Exch 803 at 821; *Bristow v Cormican* (1878) 3 App Cas 641 at 651, HL. See also PARA 1216 note 8 ante.

5 Littleton's Tenures s 701. See also *Ramsay v Margrett* [1894] 2 QB 18, CA; *Antoniadi v Smith* [1901] 2 KB 589, CA; *French v Gething* [1922] 1 KB 236, CA; *Koppel v Koppel (Wide Claimant)* [1966] 2 All ER 187, [1966] 1 WLR 802, CA; and see PARA 1216 ante.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/2. POSSESSION/(4) EFFECT OF POSSESSION/1222. Possession prima facie title.

(4) EFFECT OF POSSESSION

1222. Possession prima facie title.

The presumption of law is that the person who has de facto possession also has the property¹, and accordingly such possession is protected, whatever its origin, against all who cannot prove a superior title². This rule applies equally in criminal³ and civil⁴ matters. Thus, as against a stranger or a wrongdoer, a person in actual or apparent possession, but without the right to possession, has all the rights and remedies of a person entitled to and able to prove a present right to possession⁵.

1 *Wilbraham v Snow* (1670) 2 Wms Saund 47; *Jones v Williams* (1837) 2 M & W 326 at 331; *Jeffries v Great Western Rly Co* (1856) 5 E & B 802 at 806; *Elwes v Brigg Gas Co* (1886) 33 ChD 562 at 569; *South Staffordshire Water Co v Sharman* [1896] 2 QB 44 at 45, 46, DC; *The Winkfield* [1902] P 42, CA; *Glenwood Lumber Co Ltd v Phillips* [1904] AC 405 at 410, PC; *Daniel v Rogers* [1918] 2 KB 228, CA; *O'Sullivan v Williams* [1992] 3 All ER 385, CA. See further CIVIL PROCEDURE vol 11 (2009) PARA 1071.

2 *Rogers v Spence* (1844) 13 M & W 571, Ex Ch; *Moffatt v Kazana* [1969] 2 QB 152, [1968] 3 All ER 271. As to possession obtained by trespass see Pollock and Wright's *Possession in the Common Law* 97 et seq, 147 et seq; 7 Holdsworth's *History of English Law* 449, 450; and PARA 1220 note 4 ante. See also PARAS 1223-1226 post and TORT. It is otherwise if the wrongdoer's title is lawfully divested: *Buckley v Gross* (1863) 3 B & S 566. As to the position of a trespasser as a finder of property on land as compared with the right of a finder who is lawfully on the land see PARAS 1219, 1220 ante, 1234 note 2 post.

3 See 2 Pollock and Maitland's *History of English Law* (2nd Edn) 40 et seq.

4 See 2 Pollock and Maitland's *History of English Law* (2nd Edn) 40 et seq and TORT.

5 *Armory v Delamirie* (1722) 1 Stra 505, 1 Smith LC (23rd Edn) 393; *Bridges v Hawkesworth* (1851) 21 LJQB 75; *Bourne v Fosbrooke* (1865) 18 CBNS 515. See also *Jeffries v Great Western Rly Co* (1856) 5 E & B 802 at 805 per Lord Campbell CJ; *Eastern Construction Co Ltd v National Trust Co Ltd and Schmidt* [1914] AC 197 at 210, PC. As to the position of a finder of a chattel, however, cf para 1220 text and notes 1-8 ante, 1234 text and note 2 post; *Chabbra Corpn Pte Ltd v Jag Shakti (Owners), The Jag Shakti* [1986] AC 337, [1986] 1 All ER 480, PC. In relation to a claim in negligence see *Leigh and Silavan Ltd v Aliakmon Shipping Co Ltd* [1986] AC 785, [1986] 2 All ER 145, HL; *Transcontainer Express Ltd v Custodian Security Ltd* [1988] 1 Lloyd's Rep 128, CA; *Obestain Inc v National Mineral Development Corpn Ltd, The Sanix Ace* [1987] 1 Lloyd's Rep 465. Where property is delivered under the Police (Property) Act 1897 s 1 (as amended) (see POLICE vol 36(1) (2007 Reissue) PARA 520) to the person appearing to be the true owner, possession vests in him and a previous possessory title can no longer be relied upon: *Irving v National Provincial Bank Ltd* [1962] 2 QB 73, [1962] 1 All ER 157, CA.

UPDATE

1222 Possession prima facie title

NOTE 5--The fact of possession gives a thief, receiver or other wrongdoer possessory title of stolen property on which he can rely without reference to the circumstances in which he obtained possession: *Costello v Chief Constable of Derbyshire Constabulary* [2001] EWCA Civ 381, [2001] 3 All ER 150.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/2. POSSESSION/(4) EFFECT OF POSSESSION/1223. No title against owner.

1223. No title against owner.

Title to property, being title created merely by the act of reducing a thing into possession, necessarily implies a reduction into possession effected by a lawful act. Such an act, if it constitutes a trespass, cannot create a title to property as against the previous possessor¹. If the owner of chattels cannot be shown to have parted with his title to them, he must continue to be the owner and to have a title to the chattels superior to any that might be claimed by anyone else, including the finder or the person on whose property the chattels were found².

1 *Blades v Higgs* (1865) 11 HL Cas 621; *Elwes v Brigg Gas Co* (1886) 33 ChD 562 at 568; *Jeffries v Great Western Rly Co* (1856) 5 E & B 802 at 805; *The Winkfield* [1902] P 42 at 55, CA; *Glenwood Lumber Co Ltd v Phillips* [1904] AC 405, PC; Holmes's Common Law 223.

2 *Moffatt v Kazana* [1969] 2 QB 152, [1968] 3 All ER 271. See also PARA 1220 text and notes 1-8 ante.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/2. POSSESSION/(4) EFFECT OF POSSESSION/1224. Setting up the jus tertii.

1224. Setting up the jus tertii.

The defendant in an action for wrongful interference with goods is entitled to show, in accordance with rules of court, that a third party has a better right than the plaintiff as respects all or any part of the interest claimed by the plaintiff, or in right of which he sues; and any rule of law¹ to the contrary is abolished². These provisions appear to abolish the common law rule that a bailee is estopped from denying his bailor's title, although the bailee's estoppel may be preserved when the bailee sues otherwise than in tort; and it has also been suggested that, in order to rely upon the statutory defence, the bailee must join the relevant third party as a party to the action³.

1 ie sometimes called 'jus tertii'.

2 Torts (Interference with Goods) Act 1977 s 8 (1). See further TORT vol 45(2) (Reissue) PARA 644.

3 See further ESTOPPEL vol 16(2) (Reissue) PARA 1044.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/2. POSSESSION/(5) LOSS OF POSSESSION/1225. Voluntary loss of possession.

(5) LOSS OF POSSESSION

1225. Voluntary loss of possession.

Physical or de facto possession may be lost by discontinuance of physical control in various ways¹, but the loss of physical control does not necessarily involve loss of legal possession²; and a person entitled to immediate possession who has temporarily parted with de facto possession has the rights and remedies of a de facto possessor³. Loss of possession may also be occasioned by destruction or extinction of the chattel in fact or in law⁴. Loss of possession obviously results from a transfer or delivery of the chattel to another⁵.

Abandonment of goods takes place when possession of them is quitted voluntarily without any intention of transferring them to another⁶. A buried coffin is not regarded as abandoned, but remains in the possession of the deceased person's representatives or in that of the person who buried the deceased⁷. Similarly, the interment of animals does not imply abandonment⁸.

The possession of a person who has wilfully abandoned a thing does not necessarily render him liable for any damage subsequently caused by the thing abandoned⁹.

1 See Pollock and Wright's Possession in the Common Law 15 and PARAS 1253-1255 post.

2 See Pollock and Wright's Possession in the Common Law 16; and see PARAS 1211-1213 ante.

3 Eg a bailor where the bailment is revocable at will (see TORT) or a trustee of chattels left under the beneficiary's control (*Barker v Furlong* [1891] 2 Ch 172). As to the right of stoppage of goods in transit, which must be exercised after the goods have left the seller's actual or constructive possession and before they are in the buyer's possession see CARRIAGE AND CARRIERS vol 7 (2008) PARAS 766-772; the Sale of Goods Act 1979 s 44; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 256 et seq. A common law lien on goods usually depends upon possession and ceases when possession or right to possession is parted with: see LIEN vol 68 (2008) PARA 820 et seq; the Sale of Goods Act 1979 s 43; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 242 et seq.

4 Eg the escape and return to a wild state of a reclaimed animal (see ANIMALS vol 2 (2008) PARAS 711-712) or the escape of gas, or the placing of a plant into the soil. As to chattels affixed to land see PARA 1201 ante, 1238 post.

5 See PARA 1253 et seq post.

6 Pollock and Wright's Possession in the Common Law 44. As to the possibility of a person divesting himself of a right to possession by wilful abandonment see Pollock and Wright's Possession in the Common Law 124, 145; 22 Vin Abr 409, Waife (A); 7 Holdsworth's History of English Law 495, 496. See also PARA 1220 ante, 1236 post; and *Haynes' Case* (1613) 12 Co Rep 113 (where it was said 'a man cannot relinquish the property he hath to his goods unless they be vested in another').

7 *Haynes' Case* (1613) 12 Co Rep 113; and see CREMATION AND BURIAL vol 10 (Reissue) PARAS 905, 1122; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 285 note 1.

8 *R v Edwards and Stacey* (1877) 36 LT 30, CCR. As to the theft of things found and believed to have been abandoned see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 283 note 5, 289 note 1.

9 Pollock and Wright's Possession in the Common Law 124; *White v Crisp* (1854) 10 Exch 312 (abandonment of sunken vessel in navigable river); and see SHIPPING AND MARITIME LAW.

UPDATE

1225 Voluntary loss of possession

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/2. POSSESSION/(5) LOSS OF POSSESSION/1226. Dispossession without consent.

1226. Dispossession without consent.

An act by which a possessor of goods is deprived of his possession without his consent may be legally justifiable or wrongful according to circumstances¹. It is rightful or justifiable, for example, when the true owner retakes them from a trespasser², or when the taking is authorised by law, for example by statute³ or in a case of public necessity or as being for the true owner's benefit⁴, or in case of bankruptcy, execution or distress⁵. It is wrongful when the taking amounts to a trespass for which there is no justification⁶. Where physical possession unaccompanied by a right to possession is lawfully divested, the former possessor does not have the right of recovery which belongs to a person in actual possession⁷.

- 1 Pollock and Wright's Possession in the Common Law 77 et seq.
- 2 See TORT vol 45(2) (Reissue) PARA 670.
- 3 Eg by the Police (Property) Act 1897 s 1 (as amended) (see POLICE vol 36(1) (2007 Reissue) PARA 520); and see PARA 1222 note 5 ante.
- 4 *Isaack v Clark* (1615) 2 Bulst 306 at 312; and see TORT vol 45(2) (Reissue) PARA 681.
- 5 See the *Six Carpenters' Case* (1610) 8 Co Rep 146a; 1 Smith LC (13th Edn) 134; *Charlesworth v Mills* [1892] AC 231, HL (sheriff's possession); *R v Lushington, ex p Otto* [1894] 1 QB 420 (detention by court of alleged stolen property produced by purchaser under subpoena duces tecum); *Elias v Pasmore* [1934] 2 KB 164 (seizure by police of documents material to a criminal prosecution); *Ghani v Jones* [1970] 1 QB 693, [1969] 3 All ER 1700, CA (detention of passports and other documents). See also *Chic Fashions (West Wales) Ltd v Jones* [1968] 2 QB 299, [1968] 1 All ER 229, CA; *Frank Truman Export Ltd v Metropolitan Police Comr* [1977] QB 952, [1977] 3 All ER 431; *Malone v Metropolitan Police Comr* [1980] QB 49, [1979] 1 All ER 256, CA; *Reynolds v Metropolitan Police Comr* [1985] QB 881, [1984] 3 All ER 649, CA; BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 456 et seq; CIVIL PROCEDURE vol 11 (2009) PARA 765; CIVIL PROCEDURE vol 12 (2009) PARA 1265 et seq; DISTRESS vol 13 (2007 Reissue) PARA 901 et seq; and see *Morrish v Murrey* (1844) 13 M & W 52; and SHERIFFS.
- 6 See *R v Riley* (1853) Dears CC 149, CCR; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 282 et seq; and TORT.
- 7 *Buckley v Gross* (1863) 3 B & S 566; *Irving v National Provincial Bank Ltd* [1962] 2 QB 73, [1962] 1 All ER 157, CA.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(1) IN GENERAL/(i) Nature of Ownership/1227. Meaning of 'ownership'.

3. OWNERSHIP

(1) IN GENERAL

(i) Nature of Ownership

1227. Meaning of 'ownership'.

Ownership consists of innumerable rights over property, for example the rights of exclusive enjoyment, of destruction, alteration and alienation, and of maintaining and recovering possession of the property from all other persons. Those rights are conceived not as separately existing, but as merged in one general right of ownership¹.

The ownership of goods² differs from the ownership of land in that the common law did not treat land as the subject of absolute ownership but only of tenure³. The common law also did not recognise the possibility of the ownership of goods being split up into lesser successive interests or estates, nor did it contemplate remainders or reversions in chattels⁴.

1 Austin's Jurisprudence (5th Edn) 789. Cf the meaning of 'ownership' as applied to land, explained in *Metropolitan Ry Co v Fowler* (1891) 60 LJQB 518 at 525 per Cave J; on appeal [1892] 1 QB 165, CA, [1893] AC 416, HL; and see REAL PROPERTY. As to chattels being the subject of absolute ownership see Glanv vii 5 x 6; Bract Bk 2 c 26 p 60b, Bk 3, De Corona, c 13 p 129a, and c 14 p 131a, Bk 5, De Exceptionibus, c 10 p 407b; 2 Pollock and Maitland's History of English Law (2nd Edn) 4-10, 176-183; 7 Holdsworth's History of English Law 488 et seq.

2 Our ancient law books, which are founded upon the feudal provisions, do not often condescend to regulate ownership of personal property: 2 Bl Com (14th Edn) 385. The law of personal property is said to have been influenced by the civil law: 2 Bl Com (14th Edn) 385; 7 Holdsworth's History of English Law 460 et seq.

3 See REAL PROPERTY.

4 See PARAS 1228-1230 post.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(1) IN GENERAL/(i) Nature of Ownership/1228. Division of owner's rights.

1228. Division of owner's rights.

Ownership is nevertheless divisible to some extent¹. For example, one or more of the collection of rights constituting ownership may be detached². Thus prima facie an owner is entitled to possession³ or to recover possession of his goods against all the world⁴, a right which a dispossessed owner may exercise by peaceable retaking⁵. He may, however, voluntarily or involuntarily part with possession, for example by the pledging⁶, lending, hiring out⁷, bailment⁸, theft⁹ or loss of his goods, in any of which cases he is left with a right of ownership without possession, accompanied or not accompanied, as the case may be, by the right to possess. One particular situation is where a contract of sale includes what is often referred to as a Romalpa clause¹⁰ under which, although possession passes to the purchaser, the seller retains title to the goods (which may be the legal title or merely the equitable and beneficial ownership) until full payment has been made or some other condition has been satisfied¹¹. Ownership is also divorced from possession where the goods are in possession of a person who has a lien on them¹², or when they are seized under a distress and until a statutory sale is made¹³.

In the case of trusts, the legal ownership is usually in the trustee, and the beneficiary is said to have a beneficial or equitable interest in the trust property¹⁴.

Modern commercial methods have introduced chattel leasing. Although a chattel lease is a contract, it may give the lessee an equitable right of some kind in the subject of the lease¹⁵.

1 As to qualified ownership see PARA 1215 ante.

2 See *Hendy Lennox (Industrial Engines) Ltd v Grahame Puttick Ltd* [1984] 2 All ER 152 at 157, [1984] 1 WLR 485 at 492. As to who may be described as owner in an indictment for theft see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1217.

3 As to the possession of an owner see PARA 1216 ante.

4 Pollock and Wright's Possession in the Common Law 25.

5 Littleton's Tenures s 497; 3 Bl Com (14th Edn) 4, 5. See also *Blades v Higgs* (1861) 10 CBNS 713; *Re Ware, ex p Drake* (1877) 5 ChD 866 at 871, CA; and TORT. It is a criminal offence for an owner to make a bargain with a person who has stolen his goods not to prosecute if the goods are restored: 4 Bl Com (14th Edn) 133, 134 (theft bote); and see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 734 note 6.

6 See PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARA 3.

7 See BAILMENT vol 3(1) (2005 Reissue) PARA 50 et seq; CONSUMER CREDIT vol 9(1) (Reissue) PARA 95.

8 See BAILMENT vol 3(1) (2005 Reissue) PARAS 1, 2; CARRIAGE AND CARRIERS vol 7 (2008) PARA 760.

9 As to civil actions for wrongful taking etc see TORT.

10 See from the leading case *Aluminium Industrie Vaassen BV v Romalpa Aluminium Ltd* [1976] 2 All ER 552, [1976] 1 WLR 676, CA.

11 *Aluminium Industrie Vaassen BV v Romalpa Aluminium Ltd* [1976] 2 All ER 552, [1976] 1 WLR 676, CA; *Re Bond Worth Ltd* [1980] Ch 228, [1979] 3 All ER 919; *Borden (UK) Ltd v Scottish Timber Products Ltd* [1981] Ch 25, [1979] 3 All ER 961, CA; *Re Peachdart Ltd* [1984] Ch 131, [1983] 3 All ER 204; *Hendy Lennox (Industrial Engines) Ltd v Grahame Puttick Ltd* [1984] 2 All ER 152, [1984] 1 WLR 485; *Re Andrabell Ltd (in liquidation), Airborne Accessories Ltd v Goodman* [1984] 3 All ER 407; *Clough Mill Ltd v Martin* [1984] 3 All ER 982, [1985] 1 WLR 111, CA; *Four Point Garage Ltd v Carter* [1985] 3 All ER 12; *Tatung (UK) Ltd v Galex Telesure Ltd* (1989) 5 BCC 325. See also *E Pfeiffer Weinkellerei-Weineinkauf GmbH & Co v Arbuthnot Factors Ltd* [1988] 1 WLR 150; *Compaq Computer Ltd v Abercorn Group Ltd* [1991] BCC 484; *Kruppstaahl AG v Quittmann Products Ltd* [1982] IRLM 551.

12 See LIEN vol 68 (2008) PARA 801 et seq.

13 See DISTRESS vol 13 (2007 Reissue) PARAS 1013, 1044 et seq.

14 See TRUSTS. The trustee may himself hold only an equitable interest: see EQUITY vol 16(2) (Reissue) PARA 851.

15 *Bristol Airport plc v Powdrill* [1990] Ch 744, [1990] 2 All ER 493, CA (lease of aircraft).

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(1) IN GENERAL/(ii) Successive Interests/1229. Successive interests under early common law.

(ii) Successive Interests

1229. Successive interests under early common law.

The early common law regarded personal property, whether chattels real or chattels personal¹, as essentially the subject of absolute ownership and incapable of being held for successive interests². Thus, if a lessee³ or the owner of a chattel⁴ attempted to assign or bequeath the property to one person for life with remainder to another, the remainder was void, and the first-mentioned person took absolutely.

In the case of leases this common law rule was ultimately relaxed as to gifts by will (although not, it seems, as to assurances *inter vivos*⁵), such remainders being held effective as executory interests⁶. Moreover, the Court of Chancery allowed equitable interests to be created for life and by way of remainder or executory interest in a lease vested in trustees⁷.

After 31 December 1925 successive interests in leasehold property cannot exist at law⁸, but they can still exist as equitable interests under a will or trust⁹.

1 For the meaning of 'chattels real' and 'chattels personal' see PARAS 1203, 1204 ante.

2 7 Holdsworth's History of English Law 129 et seq, 470 et seq; Gray's Rule against Perpetuities (4th Edn), ss 71-97, 789-856; and see the article by D T Oliver in 24 LQR 431. As to the creation of successive interests see SETTLEMENTS; WILLS vol 50 (2005 Reissue) PARAS 411-412.

3 *Anon* (1536) 1 Dyer 7a; *Cecil's Case* (1556) 3 Dyer 253b.

4 Bro Abr, Done et Remainder, pl 57; *Anon* (1536) 1 Dyer 7a. As to the statement in 2 Bl Com (14th Edn) 398 to the contrary see 7 Holdsworth's History of English Law 471.

5 2 Bl Com (14th Edn) 174; 7 Holdsworth's History of English Law 129. See also EQUITY vol 16(2) (Reissue) PARA 608; *Lampet's Case* (1612) 10 Co Rep 46b; and REAL PROPERTY. Cf Gray's Rule against Perpetuities (4th Edn) ss 71-76 (American law); *Johns v Pink* [1900] 1 Ch 296 at 305 per Stirling J.

6 2 Bl Com (14th Edn) 174; *Manning's Case* (1609) 8 Co Rep 94b; *Lampet's Case* (1612) 10 Co Rep 46b; *Duke of Norfolk's Case*, *Howard v Duke of Norfolk* (1683) 2 Swan 454 at 464, 465 per Lord Nottingham; *Johns v Pink* [1900] 1 Ch 296 at 305. Such an executory interest, although not, perhaps, a vested interest, was not regarded as a mere chose in action: *Re Bellamy, Elder v Pearson* (1883) 25 ChD 620 at 624.

7 Eg *Duke of Norfolk's Case, Howard v Duke of Norfolk* (1683) 2 Swan 454; and see EQUITY vol 16(2) (Reissue) PARA 608.

8 Law of Property Act 1925 ss 1 (1), 205(1)(ix).

9 Ibid s 1 (3). Unless subject to a trust for sale, the lease is settled land within the Settled Land Act 1925 ss 1, 2: see SETTLEMENTS; WILLS.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(1) IN GENERAL/(ii) Successive Interests/1230. Successive interests under modern law.

1230. Successive interests under modern law.

Successive interests in personal chattels may be created by will with or without the interposition of trustees¹. The precise nature of interests so created is uncertain², but it would seem that the modern tendency has been to regard the first holder as having the absolute property, subject to an executory interest of a contingent character³ in the ultimate donee, and to a fiduciary duty to preserve the property for him⁴.

A specific bequest for life of the use and enjoyment of consumables is a gift of the absolute interest in the property, and a gift over after that life estate is void⁵; but this rule does not apply to stock-in-trade and farming stock⁶.

An executory bequest of chattels is void if it infringes the rule against perpetuities⁷. Moreover, all future dispositions of personal property must observe the statutory restraints on accumulations of income⁸.

A trust, whether created by will or set up inter vivos, is the usual mode of creating successive interests in personalty⁹, the trustees being the legal custodians of the property; and a trust is essential in settlements of personal property inter vivos¹⁰.

Before 1 January 1926 an estate tail in personal property was impossible¹¹, but since 31 December 1925 entailed interests in personal property may be created by way of trust, whether inter vivos or by will¹², provided that appropriate words are used¹³. Interests so created devolve according to the rule applicable to entailed interests in real property¹⁴.

1 Fearn's Contingent Remainders (10th Edn) 402 et seq; *Hoare v Parker* (1788) 2 Term Rep 376 (plate); *Re Tritton, ex p Singleton* (1889) 61 LT 301 (pictures); followed in *Re Thynne, Thynne v Grey* [1911] 1 Ch 282 (where there were trustees). See EQUITY vol 16(2) (Reissue) PARA 608; WILLS vol 50 (2005 Reissue) PARA 412. As to the creation of entailed interests, however, cf infra.

2 For the possible views and relevant authorities see 7 Holdsworth's History of English Law 475 et seq; *Re Swan, Witham v Swan* [1915] 1 Ch 829 at 833, 834, where Sargant J carefully avoided stating whether the property or only the possession vests in the first donee, but spoke of him as tenant for life (see 31 LQR 259). See also the Law of Property Act 1925 s 130 (5) (cited in PARA 1250 post) which speaks of 'the usufructuary for the time being' in reference to trusts of settled chattels.

3 In *Re Tritton, ex p Singleton* (1889) 61 LT 301 at 302, Wills J held that the executory bequest gives a mere chose in action, and no present or vested interest, to the ultimate donee, and that it fails if he predeceases the first donee. In *Re Thynne, Thynne v Grey* [1911] 1 Ch 282, Neville J held, following *Re Tritton, ex p Singleton* supra, that an executory bequest is a chose in action, even if the gift is by way of trust; but in *Re Swan, Witham v Swan* [1915] 1 Ch 829 at 834, 835, Sargant J emphasised that it gives a definite interest or right in the property, citing *Foley v Burnell* (1785) 4 Bro Parl Cas 34, HL; and in *Re Bellamy, Elder v Pearson* (1883) 25 ChD 620 an executory bequest of leaseholds took effect even though the ultimate donee died before the first taker. See further *Re Hill, Hill v Hill* [1902] 1 Ch 807, CA (executory bequest of diamonds held to be too remote, the transaction being held to be an absolute gift).

4 *Re Swan, Witham v Swan* [1915] 1 Ch 829 (where the duty was based alternatively upon trust or quasi-trust or bailment). Moreover, the court will protect the interests of an ulterior legatee in specific chattels the

loss of which cannot be compensated in damages by compelling the legatee for life to give an inventory: see *Foley v Burnell* (1783) 1 Bro CC 274 at 279; *Conduitt v Soane* (1844) 1 Coll 285; *Temple v Thring* (1887) 56 LJ Ch 767; and see CIVIL PROCEDURE vol 11 (2009) PARAS 479-480; WILLS vol 50 (2005 Reissue) PARA 412.

5 See *Randall v Russell* (1817) 3 Mer 190; *Andrew v Andrew* (1845) 1 Coll 686 at 690; *Twining v Powell* (1845) 2 Coll 262 at 268; *Cockayne v Harrison* (1872) LR 13 Eq 432 at 434; cf *Breton v Mockett* (1878) 9 ChD 95. See also GIFTS vol 52 (2009) PARA 224; WILLS vol 50 (2005 Reissue) PARA 413.

6 *Groves v Wright* (1856) 2 K & J 347; *Phillips v Beal (No 1)* (1862) 32 Beav 25; *Cockayne v Harrison* (1872) LR 13 Eq 432; *Myers v Washbrook* [1901] 1 KB 360; and see GIFTS vol 52 (2009) PARA 224; WILLS vol 50 (2005 Reissue) PARA 413.

7 *Re Hill, Hill v Hill* [1902] 1 Ch 807, CA; and see PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARAS 1080-1081.

8 See the Law of Property Act 1925 ss 164-166 and PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1121.

9 See 1 Fearn's Contingent Remainders (10th Edn) 407 et seq; EQUITY vol 16(2) (Reissue) PARA 608; and GIFTS vol 52 (2009) PARA 224. See also *Re Bellamy, Elder v Pearson* (1883) 25 ChD 620 (successive interests in a term of years) and the cases there cited.

10 See SETTLEMENTS; TRUSTS. Future equitable interests in personal property, as in land, may be created by means of powers of appointment: see *Alloway v Alloway* (1843) 4 Dr & War 380 at 387; *Harvey v Stracey* (1852) 1 Drew 73 at 136; and POWERS vol 36(2) (Reissue) PARAS 223, 273.

11 See *Leventhorpe v Ashbie* (1635) 1 Roll Abr 831 and SETTLEMENTS. It was otherwise if it was vested in trustees to be laid out in the purchase of freehold land: see EQUITY vol 16(2) (Reissue) PARA 701 et seq. As to the effect before 1 January 1926 of an assignment or bequest of personalty either by way of immediate gift or executed trust to devolve with realty, or, in the case of chattels, a direction that they should be treated as heirlooms as far as the rules of law and equity permitted, see *Savile v Earl of Scarborough* (1818) 1 Swan 537 and SETTLEMENTS.

12 Law of Property Act 1925 s 130; *Re Price* [1928] Ch 579. Such interests cannot be created by the will of a testator who died before 1 January 1926: *Re Hope's Will Trust, Hope v Thorp* [1929] 2 Ch 136. See further SETTLEMENTS; WILLS vol 50 (2005 Reissue) PARA 669.

13 Law of Property Act 1925 ss 60 (4), 130 (1); and see s 130 (3) and SETTLEMENTS vol 42 (Reissue) PARAS 611, 939.

14 *Ibid* ss 130 (1), (4), 176; and see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARAS 584, 631; WILLS vol 50 (2005 Reissue) PARA 671.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(2) ACQUISITION OF OWNERSHIP/(i) Persons who may acquire Ownership/1231. Capacity.

(2) ACQUISITION OF OWNERSHIP

(i) Persons who may acquire Ownership

1231. Capacity.

The owner may be a single individual or a legal entity, namely a corporation; or several individuals may together constitute the owner¹. In the case of corporate ownership, the rights and obligations attach to the corporate body, and the existence of those rights and obligations is not affected by the death of individual members of the body².

No restriction is placed on the acquisition of chattels personal by corporations aggregate³ or charities⁴. Aliens are capable of acquiring and holding personal property other than a British ship⁵.

- 1 As to concurrent ownership see PARA 1217 ante, 1243 et seq post.
- 2 See CORPORATIONS vol 9(2) (2006 Reissue) PARA 1245.
- 3 See CORPORATIONS vol 9(2) (2006 Reissue) PARA 1260.
- 4 See CHARITIES vol 8 (2010) PARA 68 et seq. The former restrictions on assurances of personal estate to be laid out in the purchase of land have been abolished: see the Charities Act 1960 s 38 (repealed) and CHARITIES vol 8 (2010) PARAS 82-83.
- 5 Co Litt 129b; 1 Bl Com (14th Edn) 372; *Watford v Masham* (1597) Moore KB 431; and see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 13. As to the Crown's right to seize and forfeit the private property of alien enemies see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 585.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(2) ACQUISITION OF OWNERSHIP/(ii) Acquisition of Ownership by Succession to Title of Previous Owner/1232. Succession.

(ii) Acquisition of Ownership by Succession to Title of Previous Owner

1232. Succession.

The term 'succession', when used to denote a method of acquiring title to chattels, was formerly of very limited significance, being applied only to corporations aggregate and, in rare cases, to corporations sole¹. In more modern times, however, ownership may be said to be acquired by succession whenever a person, whether a corporation or an individual, succeeds to the title of a previous owner², for example in cases of gifts³, sales⁴, under a will⁵ or on an intestacy⁶.

1 See 2 Bl Com (14th Edn) 430 et seq; Co Litt 9a, 90a, and notes thereto. Blackstone's arguments on this matter appear to depend upon ideas, now obsolete, as to the nature of corporate personality: see 3 Holdsworth's History of English Law 469 et seq, 481 note 5; 9 Holdsworth's History of English Law 69-71. It would seem that the old rule that a corporation sole could not take personalty by succession, ie could not acquire it in his corporate capacity, except by custom or statute (*Arundel's Case* (1615) Hob 64; *Howley v Knight* (1849) 14 QB 240; *Wilkinson v Verity* (1871) LR 6 CP 206 at 208), was abolished retrospectively by the Law of Property Act 1925 s 180 (1). See, however, CORPORATIONS vol 9(2) (2006 Reissue) PARA 1248 note 5.

2 'Succession' is often used in a narrower sense eg to include only succession through the death of a previous owner: see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 432 et seq. As to 'succession' for the purposes of the Settled Land Act 1925 s 1 see SETTLEMENTS; as to succession to a trade for the purpose of income tax see INCOME TAXATION vol 23(1) (Reissue) PARAS 149-153; and as to the recognition of a 'universal successor' by foreign law see *Adams v National Bank of Greece SA* [1961] AC 255, [1960] 2 All ER 421, HL.

3 See PARA 1255 post and GIFTS vol 52 (2009) PARA 201 et seq.

4 See PARA 1257 post; SALE OF GOODS AND SUPPLY OF SERVICES; and SALE OF LAND. Where goods are sold in market overt or by one whose title is voidable, it may be that a statutory title arises: see the Sale of Goods Act 1979 ss 22, 23; cf ss 24, 25. See MARKETS, FAIRS AND STREET TRADING vol 29(2) (Reissue) PARAS 1025-1027; SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 154 et seq.

5 See PARA 1264 post and WILLS.

6 See PARA 1264 post and EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 583 et seq. In relation to intestacy arising before 1 January 1926, it has been held that acquisition by a paramount title, such as by escheat of realty (*A-G of Ontario v Mercer* (1883) 8 App Cas 767 at 772, PC per Lord Selborne LC), or by a husband's marital right to personalty (*Re Boyer, Neathercoat v Lawrence* [1935] Ch 382 at 386, 387 per Farwell J), is not succession. As to the succession rights of a legitimated person see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARAS 478, 588; and as to succession on bankruptcy see PARA 1263 post.

UPDATE**1232-1234 Succession ... Lost goods**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(2) ACQUISITION OF OWNERSHIP/ (iii) Acquisition of Ownership by Change of Possession/1233. Change of possession.

(iii) Acquisition of Ownership by Change of Possession**1233. Change of possession.**

Loss of possession of chattels may result in loss of ownership, owing to the practical difficulty of following up the ownership of movables¹. If proceedings can effectively be brought, a judgment or order for the delivery of goods or payment of their assessed value may be enforced by process of execution².

Ownership also follows possession, if acquired in good faith and for value, in the case of current coin³ and negotiable instruments⁴. However, in the case of stolen goods, unless sold in market overt or, in some cases, dealt with outside the jurisdiction⁵, the ownership remains in the true owner⁶, and, where the goods have been sold in market overt to a purchaser in good faith, the property may be restored to the true owner if and when the thief is prosecuted to conviction⁷.

1 As to loss of ownership by satisfied judgment for the value of goods see PARA 1262 post.

2 See RSC Ord 45 r 4 and CIVIL PROCEDURE vol 12 (2009) PARA 1265 et seq. As to enforcement in the county court see CCR Ord 26 r 16 and CIVIL PROCEDURE vol 12 (2009) PARA 1291. As to the transfer of goods in specie see DISTRESS vol 13 (2007 Reissue) PARAS 1081-1089; and see the Sale of Goods Act 1979 s 52 and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 305; TORT.

3 *Moss v Hancock* [1899] 2 QB 111; *Banque Belge pour l'Etranger v Hambrouck* [1921] 1 KB 321 at 329, CA per Scrutton LJ.

4 See FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 1402, 1405, 1612 et seq.

5 *Winkworth v Christie, Manson and Woods Ltd* [1980] Ch 496, [1980] 1 All ER 1121.

6 *Vilmont v Bentley* (1886) 18 QBD 322 at 326, 327, CA per Lord Esher MR; affd (1887) 12 App Cas 471, HL.

7 See the Theft Act 1968 ss 28, 31 (2); MARKETS, FAIRS AND STREET TRADING vol 29(2) (Reissue) PARA 1027; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 388.

UPDATE**1232-1234 Succession ... Lost goods**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1233 Change of possession

TEXT AND NOTE 3--RSC replaced by the Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(2) ACQUISITION OF OWNERSHIP/ (iii) Acquisition of Ownership by Change of Possession/1234. Lost goods.

1234. Lost goods.

Ownership may be acquired by change of possession:

- 1 (1) as against all the world, by occupancy, where a person takes original possession of an ownerless thing¹;
- 2 (2) as against all the world, except the true owner, by a finder of lost goods in a public place taking possession of such goods or even in certain circumstances on the premises of another person².

Where property has been stolen or obtained by fraud or other wrongful means, the title to that or any other property is not affected by reason only of the conviction of the offender³.

1 See PARA 1236 post.

2 See PARA 1220 ante and BAILMENT vol 3(1) (2005 Reissue) PARA 14. See also articles by A L Goodhart in 3 Cambridge Law Journal 195 et seq; P H Winfield in 61 LQR 333; David Riesman Jr in 52 Harvard Law Review 1105; O R Marshall in (1949) 2 Current Legal Problems 68. As to property found in the course of building operations see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARA 89.

3 Theft Act 1968 s 31 (2).

UPDATE

1232-1234 Succession ... Lost goods

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(2) ACQUISITION OF OWNERSHIP/ (iii) Acquisition of Ownership by Change of Possession/1235. Lapse of time.

1235. Lapse of time.

Although de facto possession of a chattel, unaccompanied by a right to possession, is not converted into full ownership by lapse of time, the true owner's remedy by action may be barred by it¹. An owner may be prevented from enforcing his rights by reason of his own negligence².

1 See LIMITATION PERIODS vol 68 (2008) PARAS 940 et seq, 986 et seq; *Miller v Dell* [1891] 1 QB 468 at 471, CA per Lord Esher MR. As to the owner's right to retake goods in the wrongful possession of another see TORT vol 45(2) (Reissue) PARA 670; and as to whether the owner may retake by force when his action is statute-barred see Pollock and Wright's Possession in the Common Law 114, 115. See further 7 Holdsworth's History of English Law 463, 464.

2 See ESTOPPEL vol 16(2) (Reissue) PARA 1061 et seq; TORT.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(2) ACQUISITION OF OWNERSHIP/(iv) Acquisition of Ownership by taking Original Possession/1236. Occupancy.

(iv) Acquisition of Ownership by taking Original Possession

1236. Occupancy.

Ownership may be acquired by occupancy of a thing without an owner¹, for example, the capture of wild animals², the appropriation of free natural elements such as air and water³, the lawful severance of a thing, for example corn or other emblements, from the soil⁴, and, perhaps, the finding of a thing absolutely abandoned or irretrievably lost⁵.

It has been said that, when the species of a thing is changed, as by making wine, oil, bread or malt out of another person's grapes, olives, wheat or barley, the owner's title is destroyed and the operator, although liable in damages, acquires title by virtue of this possession⁶; but it appears that, in modern law⁷, alterations to a chattel divest the owner's title only when the chattel has been worked into the property of another⁸, or is no longer identifiable⁹.

1 2 BI Com (14th Edn) 400 et seq; 7 Holdsworth's History of English Law 479 et seq; Pollock and Wright's Possession in the Common Law 124; *Holden v Smallbrooke* (1667) Vaugh 187 at 188, 190. As to the relation of occupancy to ownership see further Maine's Ancient Law (1930 Edn) 268 et seq.

2 *Young v Hichens* (1843) 6 QB 606; *Aberdeen Arctic Co v Sutter* (1862) 4 Macq 355, HL; *Blades v Higgs* (1865) 11 HL Cas 621 at 632. Wild animals are not in the possession of the owner of the soil, he having at most a qualified property in them or a right to reduce them into possession (see ANIMALS vol 2 (2008) PARAS 710-716); but, in the United Kingdom, the ownership of wild animals, except fish in the sea other than royal fish (see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARAS 808-812, 839-842, 1071-1073), cannot as a rule be acquired by mere occupancy, sporting rights being enjoyed either by virtue of a franchise (Williams's Rights of Common 228 et seq), or as incidental to the ownership or possession of land (Williams's Rights of Common 240; *Case of Monopolies* (1602) 11 Co Rep 84b at 87b; 2 BI Com (14th Edn) 417); and as to game see ANIMALS vol 2 (2008) PARAS 717-719, 763 et seq.

3 2 BI Com (14th Edn) 402, 403; and see BOUNDARIES vol 4(1) (2002 Reissue) PARAS 901, 903; WATER AND WATERWAYS.

4 2 BI Com (14th Edn) 404; 7 Holdsworth's History of English Law 485 et seq. A wrongdoer who unlawfully severs chattels from the soil does not, however, thereby acquire title: 7 Holdsworth's History of English Law 486-488. See further AGRICULTURAL LAND vol 1 (2008) PARA 369.

5 In *Arrow Shipping Co v Tyne Improvement Comrs, The Crystal* [1894] AC 508 at 532, HL (wrecked vessel expressly abandoned), Lord Macnaghten stated the doubt as to whether ownership can be divested by abandonment, but gave no opinion on it. See further 2 BI Com (14th Edn) 9, 14, 402; Bract Bk 1 c 12 p 7b, Bk 2 c 2 p 9a, Bk 3, De Corona, c 3 p 120a. See also PARAS 1220 text and note 4, 1225 text and note 6 ante; and TORT.

6 Bract Bk 2 c 2 p 9, c 3 p 10; 2 BI Com (14th Edn) 404, 405.

7 See 7 Holdsworth's History of English Law 496, 497, 502, 503.

8 See PARAS 1238, 1239 post.

9 *Gough v Wood & Co* [1894] 1 QB 713 at 719, CA per Lindley LJ; *Re Oatway, Hertslet v Oatway* [1903] 2 Ch 356 at 359 per Joyce J; *Re Bond Worth Ltd* [1980] Ch 228, [1979] 3 All ER 919; *Borden (UK) Ltd v Scottish Timber Products Ltd* [1981] Ch 25, [1979] 3 All ER 961, CA; *Re Peachdart Ltd* [1984] Ch 131, [1983] 3 All ER 204; *Hendy Lennox (Industrial Engines) Ltd v Grahame Puttick Ltd* [1984] 2 All ER 152, [1984] 1 WLR 485; *Clough Mill Ltd v Martin* [1984] 3 All ER 982, [1985] 1 WLR 111, CA (where Goff LJ explained *Borden (UK) Ltd v Scottish Timber Products Ltd* supra: the sellers could not trace their title to the resin into the chipboard in which it had been incorporated by the buyers; a new product had been produced by an irreversible process; the resin had ceased to exist and the title to it must also have ceased to exist).

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(2) ACQUISITION OF OWNERSHIP/(iv) Acquisition of Ownership by taking Original Possession/1237. Invention and creation.

1237. Invention and creation.

Ownership may be acquired by invention or creation. An example is the right which an author has in his own literary compositions¹. Documents, letters, memoranda and the title prepared by a professional person for the purpose of advising or carrying out work for a client normally remain his property, and the client cannot claim them², but this may not be the case where the material produced will subsequently be of use to the client³, and such documents prepared by an agent on behalf of a principal belong to the principal⁴.

1 2 BI Com (14th Edn) 405-407; 7 Holdsworth's History of English Law 480, 496, 497; and see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 3 et seq; PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 301 et seq.

2 *London School Board v Northcroft* (1889) 2 Hudson's BC (4th Edn) 147 (quantity surveyors); *Leicestershire County Council v Michael Faraday & Partners Ltd* [1941] 2 KB 205, [1941] 2 All ER 483, CA (valuers); *Chantrey Martin & Co v Martin* [1953] 2 QB 286, [1953] 2 All ER 691, CA (accountants). As to copyright in letters see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 71.

3 *Gibbon v Pease* [1905] 1 KB 810 at 814, CA per Cozens-Hardy LJ (architect's plans); and see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARA 281.

4 *Lady Beresford v Driver* (1851) 14 Beav 387; on appeal (1852) 16 Beav 134.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(2) ACQUISITION OF OWNERSHIP/(v) Acquisition of Ownership by Accession/1238. Accession.

(v) Acquisition of Ownership by Accession

1238. Accession.

If any corporeal substance receives an accession by natural or artificial means, as by the growth of vegetables, the pregnancy of animals¹ or the embroidery of cloth, the original owner is entitled by his right of possession to the property in its improved state². Similarly, when the goods of one person are affixed to the land or chattel, for example a ship, of another, they may become part of it and so accrue to the owner of the principal thing³.

Whether a chattel has thus lost its character as a chattel so as to become part of the land to which it has been affixed depends upon the particular circumstances of the case, the most important criteria being the degree of annexation and the object of annexation⁴. There seems

no good reason why a corresponding principle should not apply where a chattel has been affixed to another chattel⁵.

1 The maxim *partus sequitur ventrem* (the offspring follow the dam) applies to all animals other than swans: *Bro Abr, Propertie and proprietate probanda*, pl 29; *Case of Swans* (1592) 7 Co Rep 15b at 17a; 2 Bl Com (14th Edn) 390, 391. See also CROWN PROPERTY vol 12(1) (Reissue) PARA 372.

2 *Appleby v Myers* (1867) LR 2 CP 651 at 659, 660, Ex Ch; *Indian Oil Corp Ltd v Greenstone Shipping SA (Panama)*, *The Ypatiana* [1988] QB 345 at 367, [1987] 3 All ER 893 at 905. See also PARA 1236 ante especially the cases cited in note 9 and PARA 1239 post. The acquisition of ownership by accession was grounded on the right of occupancy and founded on a doctrine of the Roman law: see 2 Bl Com (14th Edn) 404; 7 Holdsworth's History of English Law 501-503.

3 *Appleby v Myers* (1867) LR 2 CP 651 at 659, 660, Ex Ch; *Gough v Wood & Co* [1894] 1 QB 713 at 719, 721, CA; *Reynolds v Ashby & Son* [1904] AC 466 at 475, HL per Lord Lindley.

4 *Holland v Hodgson* (1872) LR 7 CP 328; *Leigh v Taylor* [1902] AC 157, HL; *Reynolds v Ashby & Son* [1904] AC 466, HL; *Jordan v May* [1947] KB 427, [1947] 1 All ER 231, CA; and see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARAS 84-89. As to when a tenant can claim compensation for or remove his improvements see AGRICULTURAL LAND vol 1 (2008) PARA 414 et seq; *Bain v Brand* (1876) 1 App Cas 762 at 767, HL per Cairns LC; and see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 173 et seq; vol 27(2) (2006 Reissue) PARA 788 et seq. The rule in the text is based on the legal maxim *quicquid plantatur solo solo cedit* (whatever is affixed to the soil belongs to the soil).

5 Some doubt seems to have been cast on the second sentence of this paragraph by Staughton J in *Hendy Lennox (Industrial Engines) Ltd v Grahame Puttick Ltd* [1984] 2 All ER 152 at 159, [1984] 1 WLR 485 at 494 but it is thought that the application of the above principles could produce the result he would favour in the examples he gives of radio and radar equipment on a ship or an engine incorporated in a generator set.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(2) ACQUISITION OF OWNERSHIP/(vi) Acquisition of Ownership by Confusion/1239. Intermixture.

(vi) Acquisition of Ownership by Confusion

1239. Intermixture.

Ownership of goods may be acquired by confusion or intermixture if the goods, when mixed, are indistinguishable¹. If the goods are mixed by agreement or consent, the proprietors have an interest in common in proportion to their respective shares²; if mixed by accident, or the act of a third person, for which neither owner is responsible, the proprietors become owners in common of the mixed property in proportion to the amounts contributed³. Where one party (B) wrongfully mixes the goods of another party (A) with goods of his own, which are substantially of the same nature and quality, and they cannot in practice be separated, the mixture is held in common and A is entitled to receive out of it a quantity equal to that of his goods which went into the mixture, any doubt as to that quantity being resolved in favour of A. He is also entitled to claim damages from B in respect of any loss he may have suffered, in respect of quality or otherwise, by reason of the admixture⁴.

1 The doctrine of confusion of property does not apply to distinct chattels like chairs and tables, but to commodities such as corn, wine and oil: *Smith v Torr* (1862) 3 F & F 505 at 506 per Bramwell B. As to the equitable doctrine of following trust property see EQUITY vol 16(2) (Reissue) PARA 861 et seq.

2 2 Bl Com (14th Edn) 405; *Sandeman & Sons v Tyzack and Branfoot SS Co Ltd* [1913] AC 680 at 694, 695, HL per Lord Moulton; *Hispanica de Petroleos SA v Vencedora Oceanica Navegacion SA, The Kapetan Markos NC (No 2)* [1986] 1 Lloyd's Rep 238 (affd [1987] 2 Lloyd's Rep 321, CA); and see BAILMENT vol 3(1) (2005 Reissue) PARA 37.

3 *Sandeman & Sons v Tyzack and Branfoot SS Co Ltd* [1913] AC 680 at 694, 695, HL (where the limits of the principle are considered); *Spence v Union Marine Insurance Co Ltd* (1868) LR 3 CP 427; *Gill and Duffus (Liverpool) Ltd v Scruttons Ltd* [1953] 2 All ER 977, [1953] 1 WLR 1407.

4 *Indian Oil Corpn Ltd v Greenstone Shipping SA (Panama), the Ypatiana* [1988] QB 345, [1987] 3 All ER 893; *Anon* (1594) Poph 38; *Warde v Aeyre* (1613) 2 Bulst 323; *Lupton v White* (1808) 15 Ves 432; *Colwill v Reeves* (1811) 2 Camp 575; *Spence v Union Marine Insurance Co Ltd* (1868) LR 3 CP 427; *Cook v Addison* (1869) LR 7 Eq 466; *Re Oatway, Hertslet v Oatway* [1903] 2 Ch 356; *Sandeman & Sons v Tyzack and Branfoot SS Co Ltd* [1913] AC 680, HL; *Re Tilley's Will Trusts, Burgin v Croad* [1967] Ch 1179, [1967] 2 All ER 303. Quaere whether the same rule would apply when the goods of A are not substantially of the same nature and quality.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(2) ACQUISITION OF OWNERSHIP/(vii) Acquisition of Ownership under Paramount Authority/1240. Acquisition by the Crown.

(vii) Acquisition of Ownership under Paramount Authority

1240. Acquisition by the Crown.

Property in personal chattels may be acquired by the exercise of the royal prerogative, by which a right may accrue either to the Crown itself or to persons claiming under the title of the Crown, or by prescription which supposes an ancient grant¹.

The Crown acquires title by a kind of prerogative copyright in certain books or publications, for example Acts of Parliament, Proclamations, Orders in Council, the Book of Common Prayer and the Authorised Version of the Bible².

Certain things which have been lost or abandoned belong to the Crown by prerogative, namely treasure trove, waifs, estrays, wreck, jetsam, flotsam and ligan³. Moreover, in certain cases property vests in the Crown as bona vacantia, by the force of a statute⁴. Property may also be acquired by the Crown by capture from an enemy country⁵.

1 2 Bl Com (14th Edn) 408; and see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 367 et seq. As to royal fish and swans see CROWN PROPERTY vol 12(1) (Reissue) PARAS 228-230 et seq; AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARAS 790, 807.

2 See COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 5. As to the somewhat similar rights enjoyed by certain universities and colleges see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 6.

3 Co Litt 114b; 1 Bl Com (14th Edn) 291-299; and see CROWN PROPERTY vol 12(1) (Reissue) PARAS 270 et seq, 371, 373.

4 See CROWN PROPERTY vol 12(1) (Reissue) PARAS 235, 237. Examples of bona vacantia are the property of a dissolved company (see the Companies Act 1985 ss 654-656 and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARAS 933-935) and the residuary estate of an intestate who leaves no statutory next of kin (see the Administration of Estates Act 1925 s 46 (1) (vi) and EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARAS 170-174, 613-614).

5 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 814; PRIZE vol 36(2) (Reissue) PARA 807 et seq.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(2) ACQUISITION OF OWNERSHIP/(vii) Acquisition of Ownership under Paramount Authority/1241. Transfer of ownership by satisfied judgment.

1241. Transfer of ownership by satisfied judgment.

Where damages for wrongful interference are, or would fall to be, assessed on the footing that the claimant is being compensated for the whole of his interest in the goods or for the whole of his interest in the goods subject to a reduction for contributory negligence, payment of the assessed damages, under all heads, or as the case may be settlement of a claim¹ for damages for the wrong, under all heads, extinguishes the claimant's title to that interest². The above provisions:

- 3 (1) do not apply where damages are assessed on the footing that the claimant is being compensated for the whole of his interest in the goods, but the damages paid are limited to some lesser amount by virtue of any enactment or rule of law³; and
- 4 (2) have effect subject to any agreement varying the respective rights of the parties to the agreement and, where the claim is made in court proceedings, have effect subject to any order of the court⁴.

1 For these purposes, the reference to the settlement of the claim includes (1) where the claim is made in court proceedings, and the defendant has paid a sum into court to meet the whole claim, the taking of that sum by the claimant; and (2) where the claim is made in court proceedings, and the proceedings are settled or compromised, the payment of what is due in accordance with the settlement or compromise; and (3) where the claim is made out of court and is settled or compromised, the payment of what is due in accordance with the settlement or compromise: Torts (Interference with Goods) Act 1977 s 5 (2).

2 Ibid s 5 (1). See also TORT vol 45(2) (Reissue) PARA 655 (where decisions prior to the 1977 Act are cited).

3 Ibid s 5 (3). Where under s 7 (3) (rules against double liability: see TORT vol 45(2) (Reissue) PARA 637) the claimant accounts over to another person ('the third party') so as to compensate, under all heads, the third party for the whole of his interest in the goods, the third party's title to that interest is extinguished: s 5 (4).

4 Ibid s 5 (5).

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(2) ACQUISITION OF OWNERSHIP/(vii) Acquisition of Ownership under Paramount Authority/1242. Transfer of ownership by statute.

1242. Transfer of ownership by statute.

Ownership of goods is capable of being acquired, regardless of the consent of the previous owner, by force of a statute. Examples of a transfer of ownership resulting directly from a statute occur:

- 5 (1) where an enactment nationalises a whole industry¹ or relates to the privatisation of a nationalised industry² or the reorganisation of a nationalised service³;
- 6 (2) where a bankrupt's goods are transferred to a trustee in bankruptcy⁴;
- 7 (3) where there is a sale in market overt⁵; and
- 8 (4) under the control of pollution legislation⁶.

More often, however, the transfer takes effect only after the making of an order by the court acting under some statutory provision, as, for example:

- 9 (a) when the court makes a vesting order to obviate a difficulty arising through the absence or inability of the previous owner⁷;

- 10 (b) where perishable goods are sold under rules of court pending litigation⁸;
- 11 (c) where execution is levied and completed by sale⁹;
- 12 (d) where smuggled goods are forfeited¹⁰;
- 13 (e) where a forfeiture occurs by reason of a breach of the excise laws¹¹; or
- 14 (f) where a ship is sold under proceedings against her in rem in the Admiralty Court¹².

1 See eg the Coal Industry Nationalisation Act 1946 ss 5-9 and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 2.

2 See eg the Gas Act 1986 s 49; the Electricity Act 1989 ss 65-70, Sch 10; and FUEL AND ENERGY.

3 See the National Health Service Reorganisation Act 1973 s 16; the National Health Service and Community Care Act 1990 s 8; and HEALTH SERVICES.

4 See 2 Bl Com (14th Edn) 471 et seq; the Insolvency Act 1986 s 306; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 391 et seq.

5 See the Sale of Goods Act 1979 s 22 and MARKETS, FAIRS AND STREET TRADING vol 29(2) (Reissue) PARA 1026.

6 See under the Environmental Protection Act 1990 s 59: see PARA 1220 note 6 ante.

7 See the Trustee Act 1925 ss 44-56 and TRUSTS vol 48 (2007 Reissue) PARA 875 et seq; the Mental Health Act 1983 ss 96-101 and MENTAL HEALTH vol 30(2) (Reissue) PARA 681 et seq.

8 See RSC Ord 29 r 4; CCR Ord 13 r 7; and CIVIL PROCEDURE.

9 See CIVIL PROCEDURE vol 12 (2009) PARAS 1336-1338. Where goods are taken in execution to satisfy a judgment, the sheriff has a special property in them between the seizure and the sale, but the general property in them, until sale or other lawful disposal, remains in the original owner. See also DISTRESS vol 13 (2007 Reissue) PARA 1013 et seq; *Richards v Jenkins* (1887) 18 QBD 451 at 455, CA per Lord Esher; and SHERIFFS.

10 See the Customs and Excise Management Act 1979 ss 28 (2), 49, 68, 100 (2); CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARAS 711, 946, 993, 1029; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 480 et seq.

11 See the Alcoholic Liquor Duties Act 1979 s 17 (as amended) and CUSTOMS AND EXCISE vol 12(2) (2007 Reissue) PARA 413.

12 *Castrique v Imrie* (1870) LR 4 HL 414 at 428, 429, 442; and see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 178. As to condemnation of prize see PRIZE vol 36(2) (Reissue) PARAS 838-840.

UPDATE

1242 Transfer of ownership by statute

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 3--1973 Act repealed and 1990 Act s 8 amended: Health Authorities Act 1995 Sch 1 paras 72, 98, Sch 3. As from a day to be appointed 1995 Act Sch 1 para 72 repealed: Health Act 1999 s 65(2), Sch 5.

TEXT AND NOTE 8--RSC and CCR replaced by the Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

(3) CO-OWNERSHIP

1243. Co-ownership.

Concurrent ownership¹ of chattels personal² may be either joint or in common, and in this respect resembles concurrent interests in real estate³. Moreover, expressions contained in any instrument which, at common law, would create a joint tenancy or tenancy in common in realty have an analogous effect when applied to personalty⁴.

1 As to the possession of co-owners, and action by one of two or more co-owners, see PARA 1217 ante. Co-ownership is not necessarily a defence to an action founded on conversion or trespass to goods: see the Torts (Interference with Goods) Act 1977 s 10 and PARA 1217 ante.

2 Leaseholds, being land as defined by the Law of Property Act 1925 s 205 (1) (ix) (see REAL PROPERTY vol 39(2) (Reissue) PARA 77), are subjected, with realty, to the rule that an interest in common in land can exist only in equity and only behind a trust for sale: see ss 1 (6), 34, 35, 36 (2) and REAL PROPERTY. As to choses in action see PARA 1245 note 5 post.

3 2 BI Com (14th Edn) 399.

4 2 BI Com (14th Edn) 399; and see 1 Eq Cas Abr 292. As to what words create, and as to the severance of, a joint tenancy, see 6 Cru Dig, Devise, 38 c 15 ss 1-32; REAL PROPERTY vol 39(2) (Reissue) PARA 189 et seq; and WILLS vol 50 (2005 Reissue) PARAS 677-678. Originally a corporation could not hold as joint tenant (2 BI Com (14th Edn) 184), but this anomaly was removed by the Bodies Corporate (Joint Tenancy) Act 1899 s 1: see REAL PROPERTY vol 39(2) (Reissue) PARA 192.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(3) CO-OWNERSHIP/1244. Joint ownership in personalty.

1244. Joint ownership in personalty.

A joint ownership or joint tenancy is distinguished by the four unities of possession, interest, title and time of commencement¹. The right of survivorship² attaches to a joint tenancy of personalty³, including choses in possession and in action⁴, as well as to realty⁵ until severance⁶.

1 2 BI Com (14th Edn) 180, 399; and see REAL PROPERTY vol 39(2) (Reissue) PARA 189 et seq.

2 On the death of one joint tenant his interest passes to the other joint tenants; and, when only one joint tenant survives, he becomes sole owner of the property: see REAL PROPERTY vol 39(2) (Reissue) PARA 195.

3 2 BI Com (14th Edn) 399; Littleton's Tenures ss 281, 282. For examples of the application of survivorship in relation to personalty see *Lady Shore v Billingsly* (1687) 1 Vern 482; *Morley v Bird* (1798) 3 Ves 629; *Williams v Hensman* (1861) 1 John & H 546; *Re Cohen, National Provincial Bank Ltd v Katz* [1953] Ch 88 at 95, [1953] 1 All ER 378 at 381, 382.

4 See CHOSSES IN ACTION vol 13 (2009) PARA 86.

5 See REAL PROPERTY vol 39(2) (Reissue) PARA 195.

6 2 BI Com (14th Edn) 399; Littleton's Tenures s 321. As to methods of severance see *Burgess v Rawnsley* [1975] Ch 429, [1975] 3 All ER 142, CA applying *Williams v Hensman* (1861) 1 John & H 546 at 577, where three modes of severance are indicated, namely (1) active disposition of a share by one joint tenant; (2) mutual agreement to hold as tenants in common; and (3) conduct sufficient to indicate that the interests of all were mutually treated as constituting a tenancy in common. See also *Re Butler's Trusts, Hughes v Anderson* (1888) 38 ChD 286 at 292, CA (assignment); *Re Hewett, Hewett v Hallett* [1894] 1 Ch 362 (agreement to assign); *Gould v Kemp* (1832) 1 LJ Ch 176 (affd (1834) 2 My & K 304) (letter written by one of two joint tenants to the other); *Watkinson v Hudson* (1826) 4 LJOs Ch 213 (pledge of mortgage debt); *Re Hey's Estate, Walker v Gaskill* [1914]

P 192 (agreement by joint tenants to dispose of property by their respective wills); *Re Draper's Conveyance, Nihan v Porter* [1969] 1 Ch 486, [1967] 3 All ER 853; *Greenfield v Greenfield* (1979) 38 P & CR 570; *Barton v Morris* [1985] 2 All ER 1032, [1985] 1 WLR 1257. As to severance of a joint tenancy in equity by notice under the Law of Property Act 1925 s 36 (2) proviso see REAL PROPERTY vol 39(2) (Reissue) PARA 198.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(3) CO-OWNERSHIP/1245. Ownership in common.

1245. Ownership in common.

Owners in common have a unity of possession, but a distinct and several title to their shares, which need not necessarily be equal¹. There is no right of survivorship between owners in common². Ownership in common arises:

- 15 (1) from the severance of a joint ownership³; or
- 16 (2) from a gift to two or more persons in common⁴.

As regards choses in action, it would, however, seem that ownership in common can ordinarily exist only in equity⁵.

1 Littleton's Tenures ss 292, 319; 2 Bl Com (14th Edn) 191. See further REAL PROPERTY vol 39(2) (Reissue) PARA 207 et seq.

2 Littleton's Tenures s 321.

3 Littleton's Tenures s 321. As to modes of severance see PARA 1244 note 6 ante.

4 Littleton's Tenures s 321.

5 At common law a chose in action could be owned jointly, but not, it seems, in common: *Re McKerrell, McKerrell v Gowans* [1912] 2 Ch 648 at 653. Apparently the Law of Property Act 1925 s 136 (1) does not enable a joint owner to effect a legal severance by assigning his interest (see CHOSSES IN ACTION vol 13 (2009) PARA 73), but severance, and therefore ownership in common, may occur in equity (*Re Butler's Trusts, Hughes v Anderson* (1888) 38 ChD 286 CA; *Re Hewett, Hewett v Hallett* [1894] 1 Ch 362). As to co-owners of patents see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARAS 372.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(3) CO-OWNERSHIP/1246. Partners.

1246. Partners.

At common law, although there was some uncertainty as to the operation of the doctrine of survivorship upon corporeal chattels vested jointly in partners¹, there was no doubt that the doctrine applied to their choses in action². In equity, however, the share of a deceased partner in the partnership assets devolves upon his personal representatives³, and the surviving partners have statutory power to dispose of the property for the purpose of winding up the partnership⁴.

1 The earlier cases were taken to decide that the doctrine is inapplicable to traders' chattels (see *Buckley v Barber* (1851) 6 Exch 164 and the authorities there cited), but in *Knox v Gye* (1872) LR 5 HL 656, although counsel at 670 cited this proposition and decision, both Lord Westbury at 675 and Lord Hatherley LC at 678 et seq stated the rule unqualifiedly in terms of survivorship. Cf *Buckley v Barber* supra; and see PARTNERSHIP vol 79 (2008) PARA 119. See also *Re Bourne, Bourne v Bourne* [1906] 2 Ch 427 at 430, 432, CA.

2 *Martin v Crompe* (1698) 1 Ld Raym 340; *Knox v Gye* (1872) LR 5 HL 656; *McClellan v Kennard* (1874) 9 Ch App 336 at 346: and see CHOSER IN ACTION vol 13 (2009) PARA 86.

3 *Jeffereys v Small* (1683) 1 Vern 217; *Lake v Craddock* (1732) 3 P Wms 157. As to whether the survivor is strictly a trustee for the deceased's representatives see *Knox v Gye* (1872) LR 5 HL 656 at 675, 676, 678, 679, 682. In normal circumstances their right is more akin to a general lien on the eventual surplus assets than to an interest in any specific property: *Re Bourne, Bourne v Bourne* [1906] 2 Ch 427 at 432, 434, CA. See also the Partnership Act 1890 s 43 and PARTNERSHIP vol 79 (2008) PARA 212.

4 See *ibid* s 39 and PARTNERSHIP vol 79 (2008) PARA 206. This statutory power arises, however, only on the dissolution of a partnership, and death does not necessarily dissolve a partnership: see s 33 (1) and PARTNERSHIP vol 79 (2008) PARA 176. Partnership property must be held and applied by the partners exclusively for the partnership: see s 20 (1) and PARTNERSHIP vol 79 (2008) PARA 116.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(3) CO-OWNERSHIP/1247. Division of chattels by the court.

1247. Division of chattels by the court.

Where any chattels belong to persons in undivided shares, the persons interested in a moiety or upwards may apply to the court¹ for an order for division of the chattels or any of them, according to a valuation or otherwise, and the court may make such order and give any consequential directions as it thinks fit².

1 'The court' means the High Court or, where it has jurisdiction, a county court: Law of Property Act 1925 s 203 (3) (amended by the Courts Act 1971 s 56 (4), Sch 11 Pt II). The county court has jurisdiction where the capital value of the land or of the interest in it which is to be dealt with in the court does not exceed £30,000: Law of Property Act 1925 s 188 (2) (added by the County Courts Act 1984 s 148 (1), Sch 2 Pt II para 8); High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2 (3) (a), Schedule Pt I. A county court also has unlimited jurisdiction where the parties by memorandum in writing so agree: see the County Courts Act 1984 s 24 and COURTS vol 10 (Reissue) PARA 719.

2 Law of Property Act 1925 s 188 (1) (renumbered by the County Courts Act 1984 Sch 2 Pt II para 8). Application to the High Court is by summons in Chancery chambers (Law of Property Act 1925 s 203 (2) (a), (4)), and may be made to a master (RSC Ord 32 r 14). Application in a county court is by originating application: CCR Ord 3 r 4.

UPDATE

1247 Division of chattels by the court

NOTE 2--RSC and CCR replaced by the Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/3. OWNERSHIP/(3) CO-OWNERSHIP/1248. Coparcenary.

1248. Coparcenary.

At common law personal property, unlike realty, was not inheritable and therefore could not be vested in coparceners¹. Since 31 December 1925 it has, however, been possible to create an entailed interest in personalty by way of trust²; and this equitable interest, being inheritable,

may devolve, on the death of the person entitled to it, upon the heirs female of his body as coparceners³.

1 2 Bl Com (14th Edn) 388.

2 See PARA 1230 ante.

3 Law of Property Act 1925 s 130 (4); and see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 646; SETTLEMENTS.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(1) IN GENERAL/1249. Method of alienation of chattels.

4. ALIENATION

(1) IN GENERAL

1249. Method of alienation of chattels.

The alienation of chattels personal differs essentially from the alienation of land. Chattels were never subject to the rules of feudal tenure which in early days restrained the transfer of land¹. Whereas a deed or, in the case of registered land, a statutory transfer² is now required to convey land³, chattels in possession may be transferred without deed or writing if possession is delivered⁴. Chattels are also transferable by deed, by contract of sale or exchange, and, in equity, by declaration of trust⁵.

1 See Co Litt 1a; Williams on Real Property (24th Edn) 13 et seq.

2 As to registered land see LAND REGISTRATION.

3 See DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 10 et seq.

4 2 Bl Com (14th Edn) 441; *Cochrane v Moore* (1890) 25 QBD 57 at 59 et seq, CA per Fry LJ, reviewing the earlier authorities; *Re Cole (a bankrupt), ex p the Trustee of the Property of the Bankrupt* [1964] Ch 175, [1963] 3 All ER 433, CA; *Dewar v Dewar* [1975] 2 All ER 728, [1975] 1 WLR 1532. See also PARAS 1253-1255 post. According to the old law, no gift or grant of a chattel was effectual to pass it whether orally or by deed, and whether with or without consideration, unless accompanied by delivery: *Cochrane v Moore* supra at 72, 73.

5 See PARAS 1256-1258 post and GIFTS vol 52 (2009) PARA 232. As to alienation of choses in action see CHOSSES IN ACTION vol 13 (2009) PARA 14 et seq. Apart from the desirability of writing for the purpose of providing evidence of the transaction, a disposition of an equitable interest or trust subsisting at the time of disposition must be in writing in accordance with the Law of Property Act 1925 s 53 (1) (c): see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 24. As to the necessity for writing in the case of an equitable mortgage of personalty see MORTGAGE vol 77 (2010) PARA 139; and as to interests in the proceeds of sale of land under a trust for sale see PARA 1201 note 3 ante and SALE OF LAND.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(1) IN GENERAL/1250. Settled chattels.

1250. Settled chattels.

Chattels settled to devolve with settled land or with a title of honour¹ may be sold by the tenant for life, on obtaining a court order, irrespective of the date of the settlement². Chattels settled

without reference to settled land, on trusts creating entailed interests in them, may be sold by the trustees with the consent of the usufructuary for the time being if of full age³. A disposition of property vested in trustees, other than Settled Land Act trustees, which cannot be effected by reason of the absence of any power for the purpose vested in the trustees by the trust instrument or by law, may, if the court thinks it expedient, be authorised by court order⁴.

1 Titles of honour, being incorporeal hereditaments, are land within the Settled Land Act 1925 s 67: *Re Rivett-Carnac's Will* (1885) 30 ChD 136.

2 Settled Land Act 1925 s 67 (1). As to the application of the proceeds of sale see ss 67 (2), 78. See further *Re Earl of Radnor's Will Trusts* (1890) 45 ChD 402 at 407, 418, 424, CA and SETTLEMENTS.

3 Law of Property Act 1925 s 130 (5). The proceeds of sale are held on the same trusts as those which applied to the chattels: s 130 (5).

4 Trustee Act 1925 s 57; *Re Hope's Will Trust, Hope v Thorp* [1929] 2 Ch 136 (settled portraits); and see TRUSTS.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(1) IN GENERAL/1251. Reversionary interests.

1251. Reversionary interests.

A beneficiary's reversionary interest under a trust consisting of personalty or land held upon trust for sale, whether vested or contingent, is a marketable interest which is often assigned for value, either absolutely or by way of mortgage. As in the case of the sale of land, it is customary to precede the actual assignment by an agreement describing the interest to be sold and setting out the title to be shown and the other terms upon which the transaction is to be completed.

The purchaser is usually provided with an abstract showing the documents and events upon which the vendor relies to prove his title. In the absence of agreement to the contrary, this abstract should commence with the document declaring the trust under which the interest arises as the root of title and continue with all subsequent documents and events relevant for showing that the vendor is entitled to the interest agreed to be sold¹.

Trustees are now under a duty to produce to any person interested therein all notices in writing of dealings with an equitable interest which have been served on them². As the purchaser's interest will ultimately be represented only by a claim against trustees for a money payment when the reversion comes into possession, he is, however, also concerned to ascertain not only that the vendor would have such a claim, but also all facts which may subsequently diminish the amount of such claim or make it more difficult to prove. As the purchaser's interest will be only equitable, he will take subject to all prior equities whether he knows of them or not³ and to all deductions and charges which could have been enforced against the vendor⁴. The requisitions and inquiries can therefore not be limited to matters disclosed in the abstract, but must range over all possibilities which, if they exist, could adversely affect the interest proposed to be assigned⁵.

The principles which entitle a purchaser of land to rescind the agreement on the ground of a misrepresentation of a material fact are applicable to a sale of a reversionary interest⁶.

1 See Withers on Reversions (2nd Edn) 13.

2 Law of Property Act 1925 s 138 (8). Prior to this Act trustees were not bound to answer inquiries either by a beneficiary or by a person proposing to deal with him, on the basis of the principle in *Low v Bouverie* [1891] 3

Ch 82 at 99 per Lindley J that 'it is no part of the duty of a trustee to assist his cestui que trust in selling or mortgaging his beneficial interest and in squandering or anticipating his fortune'.

3 See EQUITY vol 16(2) (Reissue) PARA 568 et seq.

4 *Priddy v Rose* (1817) 3 Mer 86; *Willes v Greenhill (No 1)* (1860) 29 Beav 376; *Ward and Pemberton v Duncombe* [1893] AC 369, HL.

5 See Withers on Reversions (2nd Edn) 5 et seq. However the interest arises, the purchaser will need to be satisfied on such questions as: under what document does the interest arise?; is there any question as to the true construction of that document as it affects the interest?; who are the present trustees and is the trust property properly vested in them?; how is the trust property at present invested and what powers of investment have the trustees?; are the trustees keeping proper accounts?; where the interest arises by virtue of the exercise of a power of appointment, has that power been properly exercised or is it liable to be set aside by reason of its being exercised in the wrong form or fraudulently? (see POWERS vol 36(2) (Reissue) PARAS 264 et seq, 364 et seq); has the vendor received any advance which is liable to be brought into account?; have the trustees notice of any prior assignment? (see CHUSES IN ACTION vol 13 (2009) PARAS 40-59; EQUITY vol 16(2) (Reissue) PARA 701); what is the age and state of health of any person taking a prior interest under the trust and will inheritance tax be payable on his death out of the trust funds? (see INHERITANCE TAXATION vol 24 (Reissue) PARAS 454 et seq, 476 et seq).

Where the interest arises under a settlement inter vivos, it will also be necessary to consider whether the settlement is likely to be set aside by reason of the subsequent bankruptcy of the settlor (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARAS 653-667), and whether inheritance tax may be payable out of the settled funds by reason of the subsequent death of the settlor (see INHERITANCE TAXATION vol 24 (Reissue) PARA 454 et seq, 476 et seq).

Where the interest arises under a will or intestacy, there should be considered: whether all debts and liabilities of the deceased have been paid in full and whether there is any reasonable possibility of subsequent claims being made against the estate; whether all prior interests under the will or intestacy have been satisfied; whether there is any possibility of a claim under the Inheritance (Provision for Family and Dependents) Act 1975 (see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 665 et seq) being substantiated; and whether all other beneficiaries have been satisfactorily identified.

6 See *Brown v Raphael* [1958] Ch 636, [1958] 2 All ER 79, CA (where it was honestly but erroneously stated that the annuitant had no aggregable income for estate duty purposes, and the contract was rescinded). See also the Misrepresentation Act 1967 s 1 and MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARAS 704, 784, 814, 817.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(1) IN GENERAL/1252. Alienation by persons under disability.

1252. Alienation by persons under disability.

The capacity of persons under disability to alienate property¹, and particular instances of limited powers of alienation, are dealt with elsewhere².

1 See GIFTS vol 52 (2009) PARAS 204-217; CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 12 et seq; MENTAL HEALTH vol 30(2) (Reissue) PARA 596 et seq; the Sale of Goods Act 1979 s 3 and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 36-37; the Settled Land Act 1925 s 38 (i) and SETTLEMENTS vol 42 (Reissue) PARA 827; and WILLS.

2 See eg AGENCY vol 1 (2008) PARA 145; COMPANIES vol 14 (2009) PARA 320; and CORPORATIONS vol 9(2) (2006 Reissue) PARAS 1255-1260.

UPDATE

1252-1254 Alienation by persons under disability ... Methods of delivery

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/ (2) VOLUNTARY ALIENATION/(i) Voluntary Alienation by Delivery/1253. Effect of delivery.

(2) VOLUNTARY ALIENATION

(i) Voluntary Alienation by Delivery

1253. Effect of delivery.

Delivery¹ is the voluntary transfer of the possession of goods to another². Where a movable object is delivered to a person with intent to transfer ownership, for example in the case of gifts³ or sales⁴, the property in the goods is transferred.

A change of possession does not, however, necessarily involve a change of ownership, as the article may be transferred for a limited purpose only, as in the case of bailments⁵. Furthermore, delivery of a chattel by an employer into the custody of his employee does not, unless it be shown that this was the intention, give the employee even possession in law; but, where delivery is made by a third person to an employee on behalf of his employer, the employee acquires possession in law as a bailee⁶.

1 See GIFTS vol 52 (2009) PARAS 237-239 (delivery generally), 271 et seq (gifts mortis causa); and PARA 1255 post.

2 Pollock and Wright's Possession in the Common Law 43, 44, 57-77.

3 See GIFTS vol 52 (2009) PARAS 237-239.

4 See the Sale of Goods Act 1979 s 61(1) and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 27-30. Delivery is not essential to the transfer of title on sale: see s 18 r 1 and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 113.

5 See BAILMENT vol 3(1) (2005 Reissue) PARA 1; PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARA 13. As to the effect of delivery to a common carrier see CARRIAGE AND CARRIERS vol 7 (2008) PARA 752 et seq.

6 Pollock and Wright's Possession in the Common Law 60; and see PARA 1213 ante; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 289; *Fowler v Lock* (1872) LR 7 CP 272; and EMPLOYMENT vol 39 (2009) PARA 6.

UPDATE

1252-1254 Alienation by persons under disability ... Methods of delivery

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/ (2) VOLUNTARY ALIENATION/(i) Voluntary Alienation by Delivery/1254. Methods of delivery.

1254. Methods of delivery.

Possession of ponderous goods and chattels in large quantities which cannot readily be transferred from hand to hand may be transferred by any transaction which effectually passes the control to the new possessor¹, for example by handing over the key of a warehouse² or of a plate chest³ in which the goods are stored, with the intention of transferring possession; but, as has been repeatedly observed, the delivery of a key does not have this effect unless it actually gives full control of the goods in question⁴. Hence, where it operates as delivery, it is, strictly speaking, not symbolic but actual delivery of the goods⁵. The mere transfer of a document representing goods does not ordinarily change the possession of the goods⁶, save that possession of goods at sea can be transferred by indorsement and delivery of the bill of lading⁷.

The delivery of a part may be a delivery of the whole if it is so intended, but not otherwise⁸.

Constructive delivery of possession may be effected by a change in the character of the possession without a corresponding change of custody, as, for example, where a seller ceases to retain possession as owner and becomes a bailee for⁹, or borrower from¹⁰, the buyer, or where chattels are transferred by way of gift inter vivos¹¹ or sale¹² to an employee or bailee who already has them in his custody, or to a finder or wrongful taker¹³ already in possession of them, or where goods are in the custody of a bailee and the bailee, purchaser and vendor agree that the goods are to be held on behalf of the purchaser¹⁴.

1 *Kilpin v Ratley* [1892] 1 QB 582, DC (man effectively delivered furniture by pointing it out and saying 'I give you this furniture'); *Re Wasserberg, Union of London and Smiths Bank Ltd v Wasserberg* [1915] 1 Ch 195 at 202; *Atkinson v Maling* (1788) 2 Term Rep 462. See further GIFTS vol 52 (2009) PARAS 237-239; SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 164.

2 *Ellis v Hunt* (1789) 3 Term Rep 464 at 468; *Chaplin v Rogers* (1801) 1 East 192 at 195; *Elmore v Stone* (1809) 1 Taunt 458; *Meyerstein v Barber* (1866) LR 2 CP 38 at 52; *Ancona v Rogers* (1876) 1 Ex D 285 at 290, CA; *Hilton v Tucker* (1888) 39 ChD 669 at 676.

3 *Bowker v Williamson* (1889) 5 TLR 382.

4 See the cases cited in notes 1, 2 supra; *Wrightson v McArthur and Hutchisons (1919) Ltd* [1921] 2 KB 807 at 816, 817 (goods in locked room within another's house).

5 *Gough v Everard* (1863) 2 H & C 1; *Wrightson v McArthur and Hutchisons (1919) Ltd* [1921] 2 KB 807 at 816, 817 (it seems that the delivery of the key does not give merely 'constructive' possession); Pollock and Wright's Possession in the Common Law 61 et seq and the authorities there cited; 7 Holdsworth's History of English Law 503 et seq.

6 *Madras Official Assignee v Mercantile Bank of India Ltd* [1935] AC 53 at 58, 59, PC; *Dublin City Distillery Ltd v Doherty* [1914] AC 823, HL.

7 *Sewell v Burdick* (1884) 10 App Cas 74 at 96, HL per Lord Blackburn (where the delivery was symbolical); *The San Nicholas* [1976] 1 Lloyd's Rep 8, CA; *The Aramis* [1989] 1 Lloyd's Rep 213, CA; *Enichem Anic SpA v Ampelos Shipping Co Ltd, The Delfini* [1990] 1 Lloyd's Rep 252, CA; *The Future Express* [1992] 2 Lloyd's Rep 79. See also SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 368. As to the effect of dock warrants and other mercantile documents in transferring possession see *Gunn v Bolckow, Vaughan & Co* (1875) 10 Ch App 491; SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 139.

8 *Dixon v Yates* (1833) 5 B & Ad 313 at 339; *Kemp v Falk* (1882) 7 App Cas 573 at 586, HL per Lord Blackburn. See also the Sale of Goods Act 1979 s 45(7) and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 270.

9 *Elmore v Stone* (1809) 1 Taunt 458; *Castle v Sworder* (1861) 6 H & N 828, Ex Ch. See also the Sale of Goods Act 1979 s 20(3) and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 149.

10 *Marvin v Wallis* (1856) 6 E & B 726.

11 *Winter v Winter* (1861) 4 LT 639; *Kilpin v Ratley* [1892] 1 QB 582, DC; *Re Stoneham, Stoneham v Stoneham* [1919] 1 Ch 149; and see GIFTS vol 52 (2009) PARAS 237-239.

12 See *Edan v Dudfield* (1841) 1 QB 302 at 307; *Lillywhite v Devereux* (1846) 15 M & W 285 at 291. See also the Sale of Goods Act 1979 s 17 and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 112.

13 Shep Touch (8th Edn) 240, 241; 7 Holdsworth's History of English Law 455, 456.

14 As to the sale of goods in the possession of a bailee see *Re Florence, ex p Wingfield* (1879) 10 ChD 591 at 593, CA per Jessel MR and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 120 et seq; and as to a pledge of goods bailed see *Madras Official Assignee v Mercantile Bank of India Ltd* [1935] AC 53 at 58, 59, PC; *Dublin City Distillery Ltd v Doherty* [1914] AC 823, HL. See further PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARA 13.

UPDATE

1252-1254 Alienation by persons under disability ... Methods of delivery

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/ (2) VOLUNTARY ALIENATION/(i) Voluntary Alienation by Delivery/1255. Gifts.

1255. Gifts.

In the case of a gift inter vivos, delivery of possession is necessary to vest a chattel in the donee¹ unless the donor expressly or impliedly constitutes himself a trustee for the donee², or unless the gift is by deed³.

Delivery is necessary also in the case of gifts mortis causa⁴. Such gifts are, however, peculiar in several respects⁵. Thus, even a chose in action may be transferred by a gift mortis causa if accompanied by delivery of some document essential to its recovery⁶.

1 2 Bl Com (14th Edn) 441; *Irons v Smallpiece* (1819) 2 B & Ald 551; *Cochrane v Moore* (1890) 25 QBD 57, CA; and see GIFTS vol 52 (2009) PARAS 237-239. As to the development of this rule, and as to the possibility that a donee without delivery may sue a wrongful taker, see 7 Holdsworth's History of English Law 505 et seq.

2 *Jones v Lock* (1865) 1 Ch App 25; and see GIFTS vol 52 (2009) PARA 240 et seq.

3 *Cochrane v Moore* (1890) 25 QBD 57 at 61, 72, 73, CA. See also PARA 1256 post and GIFTS vol 52 (2009) PARAS 231-236.

4 See GIFTS vol 52 (2009) PARA 271 et seq.

5 See GIFTS vol 52 (2009) PARA 271 et seq. For gifts mortis causa an inchoate or imperfect delivery suffices, such as the delivery of the key of a box in the possession of the donor's bank: *Re Wasserberg, Union of London and Smiths Bank Ltd v Wasserberg* [1915] 1 Ch 195; *Re Lillingston, Pembrey v Pembrey* [1952] 2 All ER 184. As to the retention of a duplicate key cf *Re Craven's Estate, Lloyd's Bank Ltd v Cockburn* [1937] Ch 423 at 428, [1937] 3 All ER 33 at 38 per Farwell J and *Woodard v Woodard* [1992] RTR 35, CA.

6 See GIFTS vol 52 (2009) PARA 274.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/ (2) VOLUNTARY ALIENATION/(ii) Voluntary Alienation otherwise than by Delivery/1256. Alienation by deed.

(ii) Voluntary Alienation otherwise than by Delivery

1256. Alienation by deed.

Chattels, whether capable or incapable of delivery, may be alienated by deed without delivery, and with or without valuable consideration¹. In certain circumstances, however, documents by which goods or chattels are transferred absolutely or by way of mortgage without delivery of possession must be registered and attested in accordance with statutory requirements².

¹ Shep Touch (8th Edn) 224; *Anon* (1467) YB 7 Edw 4 fo 20B pl 21; Bract Bk 3 c 2 p 100b; *Cochrane v Moore* (1890) 25 QBD 57 at 61, 72, 73, CA; and see GIFTS vol 52 (2009) PARA 232. As to the transfer in equity of property in chattels see GIFTS vol 52 (2009) PARA 240 et seq; TRUSTS; and as to alienation by way of contract of sale without delivery see PARA 1257 post.

² As to the cases referred to, and as to those requirements and the effect of non-compliance, see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1711 et seq; and as to instruments which are not within the expression 'bill of sale' see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 1656-1661. Assignments by way of mortgage must be in accordance with the statutory form: see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1711 et seq.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/ (2) VOLUNTARY ALIENATION/(ii) Voluntary Alienation otherwise than by Delivery/1257. Contract of sale.

1257. Contract of sale.

The most usual way of transferring goods is by means of a contract of sale, that is a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called 'the price'¹. The law relating to the sale of goods is stated elsewhere². For these purposes, it is sufficient to observe that such a contract may operate to transfer the property in the goods irrespective of delivery, if the parties to the contract so intended³.

¹ See the Sale of Goods Act 1979 s 2(1) and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 29. See also 2 BI Com (14th Edn) 446.

² See SALE OF GOODS AND SUPPLY OF SERVICES.

³ *Cochrane v Moore* (1890) 25 QBD 57, CA. See also the Sale of Goods Act 1979 ss 16-19 and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 111 et seq.

UPDATE

1257 Contract of sale

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(2) VOLUNTARY ALIENATION/(ii) Voluntary Alienation otherwise than by Delivery/1258. Exchange.

1258. Exchange.

The property in chattels may be transferred by a contract of exchange or barter, namely where the consideration to be given for the goods is other goods in lieu of money¹. Apparently the common law principles applicable to sales of goods are ordinarily applicable to exchanges².

¹ Thus it appears that a contract of exchange may transfer the property in goods without delivery: *Cochrane v Moore* (1890) 25 QBD 57 at 74, 75, CA per Lord Esher MR; 2 BI Com (14th Edn) 446, 448; 3 Holdsworth's History of English Law 354n, 355 et seq. As to exchange with delivery see *South Australian Insurance Co v Randell* (1869) LR 3 PC 101; *Pearce v Brain* [1929] 2 KB 310, DC. See further BAILMENT vol 3(1) (2005 Reissue) PARAS 34-37; *Emanuel v Dane* (1812) 3 Camp 299; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 1. An exchange of land completed by possession on both sides has been held effective in equity (*Brown v Patterson* (1899) 43 Sol Jo 298) notwithstanding that an exchange of land is now void at law unless made by deed (see the Law of Property Act 1925 s 52 (1) and DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 14). As to exchanges of land generally see REAL PROPERTY vol 39(2) (Reissue) PARAS 240-242.

² 2 BI Com (14th Edn) 446; and see *Emanuel v Dane* (1812) 3 Camp 299 and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 1.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(3) INVOLUNTARY ALIENATION/1259. In general.

(3) INVOLUNTARY ALIENATION

1259. In general.

The principal cases in which involuntary alienation of personal property occurs are distress¹, execution² and bankruptcy³. Another case is that of forfeiture⁴.

An owner may also be involuntarily deprived of his ownership of goods by their sale in market overt⁵, or by destruction⁶, or by the transfer of the goods to a foreign country where by the laws of that country another person gains a valid title to the goods⁷, or by a complete change in the nature of the goods, as, for example, where they are converted into real property⁸, or by dealings under the Factors Act 1889⁹, under the Opencast Coal Act 1958¹⁰ or under the Sale of Goods Act 1979¹¹, or by the operation of the doctrine of estoppel¹².

¹ See PARA 1260 post.

² See PARAS 1261, 1262 post.

³ See PARA 1263 post.

⁴ As to the power of the court to grant relief against forfeiture see *BICC plc v Burndy Corp* [1985] Ch 232, [1985] 1 All ER 417, CA; *Goker v NWS Bank plc* (1990) Times, 23 May. It is a jurisdiction which is unlikely to be used save in exceptional cases in which the court is satisfied that no significant prejudice will result to the lender from the grant of relief. As to the forfeiture of goods following a conviction see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARAS 2168-2169; CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1155 et seq; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 480 et seq; and PARA 1242 text and note 10 ante.

⁵ See *Hargreave v Spink* [1892] 1 QB 25 and MARKETS, FAIRS AND STREET TRADING vol 29(2) (Reissue) PARA 1026. As to how far theft affects the owner's title see PARA 1233 text and note 7 ante and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 388.

6 See PARA 1225 ante.

7 *Cammell v Sewell* (1860) 5 H & N 728, Ex Ch; *Castrique v Imrie* (1870) LR 4 HL 414; *Alcock v Smith* [1892] 1 Ch 238, CA; *Winkworth v Christie, Manson and Woods Ltd* [1980] Ch 496, [1980] 1 All ER 1121. See also CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 405-411.

8 Bac Abr, Trespass (E) 2; 2 Bl Com (14th Edn) 404, 405; eg 'If I employ a builder to build me a house and he does so with bricks which are not his, I apprehend that they become mine and that their former owner cannot recover them or their value from me': *Gough v Wood & Co* [1894] 1 QB 713 at 719, CA per Lindley LJ. See also *Gough v Wood & Co* supra at 721. As to the loss of ownership where goods in the hands of another person are no longer identifiable see PARA 1236 ante.

9 See the Factors Act 1889 s 2; AGENCY vol 1 (2008) PARAS 148, 165; BAILMENT vol 3(1) (2005 Reissue) PARA 88; PLEDGES AND PAWNS vol 36(1) (2007 Reissue) PARA 10; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 157-158.

10 See the Opencast Coal Act 1958 s 12 (as amended) and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 428 et seq.

11 See the Sale of Goods Act 1979 ss 24, 25 and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 157-158.

12 See ESTOPPEL vol 16(2) (Reissue) PARA 1067.

UPDATE

1259 In general

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(3) INVOLUNTARY ALIENATION/1260. Distress.

1260. Distress.

As a rule, the remedy of an unsecured creditor is to sue the debtor for the amount owing. Without legal process he cannot obtain redress by seizing the debtor's goods, except where he is entitled to avail himself of the summary remedy of distress¹. Chattels may be distrained for rent in arrear, for rates, council tax and taxes and for sums payable by virtue of orders of magistrates' courts². Moreover, trespassing livestock may be detained and sold³.

¹ 3 Bl Com (14th Edn) 6 et seq. As to the nature of this remedy see DISTRESS vol 13 (2007 Reissue) PARA 901 et seq.

² See DISTRESS vol 13 (2007 Reissue) PARAS 902, 905 et seq, 1104 et seq, 1134 et seq.

³ See ANIMALS vol 2 (2008) PARA 758 et seq.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(3) INVOLUNTARY ALIENATION/1261. Execution.

1261. Execution.

A debtor's goods are subject to involuntary alienation when taken in execution of a judgment or order of the court¹. As a rule, execution against chattels is made under a writ of fieri facias².

The executor or administrator of a deceased debtor may be sued by a creditor, and execution levied against the debtor's goods³, or administration of the debtor's estate may be granted by the court⁴.

1 See CIVIL PROCEDURE vol 12 (2009) PARA 1265 et seq. As to execution in inferior courts see CIVIL PROCEDURE vol 12 (2009) PARA 1283 et seq; and as to the effect of the death of the debtor after judgment see CIVIL PROCEDURE vol 12 (2009) PARA 1243.

2 See CIVIL PROCEDURE vol 12 (2009) PARA 1266. As to the date from which a writ of execution binds the property in the goods of the execution debtor see CIVIL PROCEDURE vol 12 (2009) PARAS 1295-1296.

3 See EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 815 et seq.

4 See EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 705 et seq.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(3) INVOLUNTARY ALIENATION/1262. Satisfied judgment.

1262. Satisfied judgment.

Involuntary alienation occurs where an owner out of possession, having obtained judgment for the value of his chattel against a wrongdoer, is paid the sum so awarded¹.

1 See PARA 1241 ante.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(3) INVOLUNTARY ALIENATION/1263. Bankruptcy.

1263. Bankruptcy.

With certain exceptions¹, property² belonging to or vested in a bankrupt at the commencement of his bankruptcy vests in the trustee of the bankrupt's estate immediately on his appointment taking effect or, in the case of the official receiver, on his becoming trustee, for the benefit of his creditors³. Moreover, in certain cases, dispositions of property made by the bankrupt before his adjudication are invalidated by it⁴.

1 See BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 390 et seq.

2 As to what property is available for distribution see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 390 et seq.

3 See the Insolvency Act 1986 ss 283, 306-309 and BANKRUPTCY AND INDIVIDUAL INSOLVENCY.

4 See BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 653 et seq.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(4) ALIENATION AT DEATH/1264. Death.

(4) ALIENATION AT DEATH

1264. Death.

On the death of an owner his personal property devolves upon his personal representatives, subject to the administration of the estate, and the beneficial title is transferred in accordance with either his testamentary disposition¹ or, in the case of an intestacy, the statutory provisions regulating the distribution of the property of an intestate².

Every person of full age³, that is 18 years, has power to dispose by will of all the personal estate⁴ to which he is entitled at his death⁵, although such a disposition may be affected by a court order for reasonable financial provision out of the estate made on the application of the spouse or child of the deceased, or a former spouse who has not remarried, or any person treated by the deceased as a child of the family in relation to any marriage to which the deceased was a party, or any person who was being maintained by the deceased⁶. The power of disposition extends to all contingent, executory or other future interests in any personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may have become vested, and notwithstanding that he may become entitled to the property or interests after the date of execution of his will⁷.

Upon the death of an owner of personal property, that property devolves upon his personal representative, subject to the administration of the estate, and may be sold by him in order to discharge the debts of the deceased⁸. If the deceased has appointed an executor, the property accordingly vests immediately in the executor, to be applied after payment of debts according to the directions of the will⁹. If he dies wholly intestate, it vests in the administrator as soon as letters of administration are taken out¹⁰.

¹ See EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 665; WILLS vol 50 (2005 Reissue) PARA 301 et seq. As to gifts mortis causa see GIFTS vol 52 (2009) PARA 271 et seq.

² See EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 583 et seq.

³ Wills Act 1837 s 7 (amended by the Family Law Reform Act 1969 s 3 (1) (a)). As to the earlier law see 2 Bl Com (14th Edn) 492, 497; Co Litt 89b note (6). See also WILLS. As to the testamentary capacity of persons under disability see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 53; MENTAL HEALTH vol 30(2) (Reissue) PARAS 610, 682; and WILLS vol 50 (2005 Reissue) PARAS 323-326. See also PARA 1252 ante.

⁴ For the meaning of 'personal estate' see PARA 1204 note 16 ante and EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 335.

⁵ Wills Act 1837 s 3 (amended by the Statute Law Revision (No 2) Act 1888 s 1, Schedule; the Statute Law (Repeals) Act 1969 s 1, Schedule, Pt III); and see WILLS vol 50 (2005 Reissue) PARA 327 et seq. A tenant in tail of full age may dispose by will of personal property which has been entailed: see the Law of Property Act 1925 ss 130, 176 and REAL PROPERTY vol 39(2) (Reissue) PARA 119 et seq. After 31 December 1925 the Wills Act 1837 takes effect to enable equitable interests to be disposed of subject and without prejudice to the estate and powers of a personal representative: Law of Property (Amendment) Act 1924 s 9, Sch 9 para 3.

⁶ As to the court's power to order maintenance out of the estate see the Inheritance (Provision for Family and Dependents) Act 1975 s 1 and EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 665 et seq.

⁷ Wills Act 1837 s 3 (as amended: see note 5 supra). As to entailed property see note 5 supra.

⁸ See EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 335 et seq. As to the effect of a judgment for administration by the court on the powers of personal representatives see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 736; and as to the administration in bankruptcy of the estate of a deceased insolvent see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 823 et seq.

9 *Smith v Milles* (1786) 1 Term Rep 475 at 480; *Woolley v Clark* (1822) 5 B & Ald 744; and see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARAS 29 et seq, 335 et seq. As to the order of application of assets for the payment of debts see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 410 et seq.

10 See EXECUTORS AND ADMINISTRATORS.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(5) PROPERTY ACQUIRED AFTER ACT OF ALIENATION/1265. Assignment of after-acquired property.

(5) PROPERTY ACQUIRED AFTER ACT OF ALIENATION

1265. Assignment of after-acquired property.

Personal chattels which, at the date of the assignment, are either not in existence or not the grantor's property, are not assignable at common law¹, unless the grantor already has a potential property in them as present owner or possessor of that which is expected to produce them². Thus, it has been held that an assignment purporting to convey all chattels which are or will afterwards be in the grantor's house does not pass the property in chattels which the grantor acquires subsequently³. Such an assignment is ineffective at law as an assignment⁴ as regards future acquired goods unless followed by delivery or ratified by some act done by the grantor with that view after he has acquired the property, but the mere bringing of goods onto the grantor's premises is not necessarily such an action⁵.

1 *Robinson v Macdonnell* (1816) 5 M & S 228; *Re Mudge* [1914] 1 Ch 115 CA; *Re Bowden, Hulbert v Bowden* [1936] Ch 71 at 74; 14 Vin Abr 50, Grants (H 6); *Shep Touch* (8th Edn) 241; *Com Dig Grant* (D); *Perkin's Profitable Booke* ss 65, 90.

2 Bacon's Maxims of the Law, Regula 14: 'The law doth not allow of grants except there be a foundation of an interest in the grantor'. Thus, a tenant of land may assign all his interest in the future crops of that land, or a parson may grant all the tithe wool that he is to have in such a year, but a man cannot grant all the wool that is to grow on the sheep he may subsequently buy: *Grantham v Hawley* (1615) Hob 132; *Petch v Tutin* (1846) 15 M & W 110; and see AGRICULTURAL LAND vol 1 (2008) PARA 363 et seq. In sale this distinction may decide whether the property can pass before delivery or appropriation: see *Grantham v Hawley* supra and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 128. It would seem that a deed of gift disposing only of potential property may be effective without delivery, and is outside the Bills of Sale Acts: see *Thomas v Kelly* (1888) 13 App Cas 506 at 519, HL per Lord Macnaghten. As to the Bills of Sale Acts see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1630; and as to the avoidance of a general assignment of future book debts see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 676; CHOSSES IN ACTION vol 13 (2009) PARA 30.

3 See *Lunn v Thornton* (1845) 1 CB 379; *Tapfield v Hillman* (1843) 6 Man & G 245 (where, however, on a question of construction of the instrument, it was held that future chattels were not included).

4 *Thomas v Kelly* (1888) 13 App Cas 506 at 515, HL per Lord Fitzgerald. Such an assignment may, however, operate in equity: see PARA 1266 post.

5 *Lunn v Thornton* (1845) 1 CB 379. See also FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1699.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(5) PROPERTY ACQUIRED AFTER ACT OF ALIENATION/1266. When an assignment of after-acquired property is effective.

1266. When an assignment of after-acquired property is effective.

An assignment of after-acquired property, when made for valuable consideration¹, operates in equity as a contract which is enforceable against the assignor, and which, as soon as he

acquires property which can be identified as that comprised in the assignment, becomes an equitable charge upon that property². As soon as the assignor acquires the legal interest, the equitable interest passes to the assignee, equity treating as done that which ought to be done³, and the assignor then becomes trustee of the chattels for the assignee⁴. If the assignee lawfully acquires possession of the property when it comes into existence, the legal title vests in him⁵, whether the assignment was for value or not⁶. It is, however, uncertain whether a person can effectively charge or assign his whole estate⁷.

1 A voluntary assignment of an expectancy does not create an enforceable contract, even if by deed: *Meek v Kettlewell* (1843) 1 Ph 342; *Re Ellenborough, Towry Law v Burne* [1903] 1 Ch 697.

2 *Holroyd v Marshall* (1862) 10 HL Cas 191; *Tailby v Official Receiver* (1888) 13 App Cas 523, HL; *Re Ellenborough, Towry Law v Burne* [1903] 1 Ch 697 at 699; *Re Dallas* [1904] 2 Ch 385 at 393, CA per Buckley J; *Re Reis, ex p Clough* [1904] 2 KB 769, CA (affd sub nom *Clough v Samuel* [1905] AC 442, HL); *Re Lind, Industrials Finance Syndicate Ltd v Lind* [1915] 1 Ch 744 (affd [1915] 2 Ch 345, CA); *Re Wait* [1927] 1 Ch 606, CA. See further CHUSES IN ACTION vol 13 (2009) PARA 30; DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 273; EQUITY vol 16(2) (Reissue) PARAS 562, 645. The rule against perpetuities has never been applied to assignments of this nature: see PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1042.

3 *Collyer v Isaacs* (1881) 19 ChD 342 at 351, CA, explained and distinguished in *Re Lind, Industrials Finance Syndicate Ltd v Lind* [1915] 2 Ch 345, CA, reviewing the authorities which developed the modern doctrine that the assignee has more than a specifically enforceable contract. See also EQUITY vol 16(2) (Reissue) PARAS 562, 645.

4 *Holroyd v Marshall* (1862) 10 HL Cas 191. See also the cases cited in notes 2, 3 supra.

5 *Holroyd v Marshall* (1862) 10 HL Cas 191 at 220 per Lord Chelmsford. See also *Hope v Hayley* (1856) 5 E & B 830; *Morris v Delobbel-Flipo* [1892] 2 Ch 352 at 360.

6 *Re Bowden, Hulbert v Bowden* [1936] Ch 71 (assignees of an expected legacy held to be entitled to receive it by virtue of a power of attorney given by the assignor and not revoked).

7 *Barker v Barker* [1952] P 184, [1952] 1 All ER 1128, CA; *Syrett v Egerton* [1957] 3 All ER 331, [1957] 1 WLR 1130, DC.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(5) PROPERTY ACQUIRED AFTER ACT OF ALIENATION/1267. Bill of sale of after-acquired property.

1267. Bill of sale of after-acquired property.

A bill of sale of after-acquired chattels is void except as against the grantor¹, and by implication as between the grantor and the grantee a sale of future chattels is a bill of sale of future chattels within the meaning of the Bills of Sale Acts 1878 and 1882².

1 See the Bills of Sale Act (1878) Amendment Act 1882 s 5 and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1697.

2 See FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 1623, 1635, 1638, 1651. The view of Lord Macnaghten in *Thomas v Kelly* (1888) 13 App Cas 506 at 519, HL that a bill of sale of future or after-acquired property did not fall within the Act was said not to be correct and was not followed in *Welsh Development Agency v Export Finance Co Ltd* [1990] BCC 393; revsd as to the effect of the agreement [1992] BCLC 148, CA.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(6) RESTRAINTS ON ALIENATION/1268. Repugnant conditions.

(6) RESTRAINTS ON ALIENATION

1268. Repugnant conditions.

Conditions repugnant to the estate previously given are void¹, and for this reason the courts have always leaned against a restraint on alienation².

1 It is impossible to give the ownership of property to a person in possession, and at the same time to direct that he is not to have the ordinary rights and incidents of ownership: *Re Forder, Forder v Forder* [1927] 2 Ch 291 at 311, CA per Sargant LJ. See also *Re Dugdale, Dugdale v Dugdale* (1888) 38 ChD 176; GIFTS vol 52 (2009) PARA 254; and WILLS vol 50 (2005 Reissue) PARA 419.

2 *Stogdon v Lee* [1891] 1 QB 661 at 670, CA per Fry LJ. As to the validity of partial restraints on alienation see *Re Rosher, Rosher v Rosher* (1884) 26 ChD 801; *Re Elliot, Kelly v Elliot* [1896] 2 Ch 353; and GIFTS vol 52 (2009) PARA 254; the Settled Land Act 1925 s 106 (2) and SETTLEMENTS vol 42 (Reissue) PARA 782. As to protected life interests see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARAS 405-409; the Trustee Act 1925 s 33; and SETTLEMENTS vol 42 (Reissue) PARA 917. As to the recognition paid by the courts to restraints on alienation valid according to the law of other countries see *Re Fitzgerald, Surman v Fitzgerald* [1904] 1 Ch 573, CA and CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 416-417.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(6) RESTRAINTS ON ALIENATION/1269. Restrictions on alienation.

1269. Restrictions on alienation.

An absolute interest in personalty no less than in realty, once given, cannot be fettered by a gift over on alienation¹, for the right of alienation is incidental to the beneficial ownership of property². Accordingly any restriction which substantially takes away the power of alienation is void as being repugnant to the very conception of ownership. A partial restraint which does not deprive the owner of his power of alienation may, however, be good³. Thus a condition that the donee is not to alienate a reversionary interest before it falls into possession⁴, or is not to alienate to a particular person or class of persons⁵, may be valid.

A gift over on alienation affecting a life interest with a power of disposition by will or deed is invalid as the gift is equivalent to absolute ownership⁶. Similarly, if an annuity is to be bought in the name of an annuitant, a direction that it is to cease on alienation is inconsistent with the absolute ownership previously conferred, and the annuitant is entitled to demand payment of the sum required to purchase that annuity⁷.

The rule preventing the fettering of absolute interests applies equally to equitable and to legal interests⁸. Trusts, therefore, cannot be created with a proviso preventing the beneficiary from alienating his interest⁹, or with a proviso that that interest is not to be made subject to the claims of creditors¹⁰.

1 *Bradley v Peixoto* (1797) 3 Ves 324; *Re Jones' Will* (1870) 23 LT 211; *Metcalfe v Metcalfe* (1889) 43 ChD 633 at 639, CA; *Re Bourke's Trusts* (1891) 27 LR Ir 573; *Re Brown, District Bank Ltd v Brown* [1954] Ch 39, [1953] 2 All ER 1342; and see GIFTS vol 52 (2009) PARA 254.

2 *Corbett v Corbett* (1888) 14 PD 7, CA; *Re Hollis' Hospital Trustees and Hague's Contract* [1899] 2 Ch 540; *Re Forder, Forder v Forder* [1927] 2 Ch 291 at 311, CA. See further GIFTS vol 52 (2009) PARA 254; *Lampet's Case* (1612) 10 Co Rep 46b at 48b; and REAL PROPERTY vol 39(2) (Reissue) PARA 231. As to the effect of an absolute interest followed by a power of appointment see POWERS vol 36(2) (Reissue) PARA 220.

3 *Re Rosher, Rosher v Rosher* (1884) 26 ChD 801; *Re Dugdale, Dugdale v Dugdale* (1888) 38 ChD 176; *Corbett v Corbett* (1888) 14 PD 7, CA; *Re Cockerill, Mackaness v Percival* [1929] 2 Ch 131; *Re Brown, District Bank Ltd v Brown* [1954] Ch 39, [1953] 2 All ER 1342.

4 *Churchill v Marks* (1844) 1 Coll 441; *Re Payne* (1858) 25 Beav 556; *Re Porter, Coulson v Capper* [1892] 3 Ch 481; *Re Smith, Smith v Smith* [1916] 1 Ch 369; *Re Forder, Forder v Forder* [1927] 2 Ch 291, CA; and see GIFTS vol 52 (2009) PARA 254. As to the invalidity of a restriction which extends beyond the perpetuity period see PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1002.

5 Co Litt 223a; *Re Macleay* (1875) LR 20 Eq 186; *Re Rosher, Rosher v Rosher* (1884) 26 ChD 801; and see GIFTS vol 52 (2009) PARA 254.

6 *Re Wolstenholme, Marshall v Aizlewood* (1881) 43 LT 752. See further *Bird v Johnson* (1854) 18 Jur 976; *Rochford v Hackman* (1852) 9 Hare 475; *Corbett v Corbett* (1888) 14 PD 7, CA. See also BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 405; WILLS vol 50 (2005 Reissue) PARA 666.

7 *Hunt-Foulston v Furber* (1876) 3 ChD 285; *Re Mabbett, Pitman v Holborrow* [1891] 1 Ch 707; cf *Re Dempster, Borthwick v Lovell* [1915] 1 Ch 795 (where the gift was apparently construed as a determinable limitation: see PARA 1271 post). See also RENTCHARGES AND ANNUITIES.

8 *Brandon v Robinson* (1811) 18 Ves 429; *Graves v Dolphin* (1826) 1 Sim 66; *Snowdon v Dales* (1834) 6 Sim 524; *Corbett v Corbett* (1888) 14 PD 7, CA; *Re Fitzgerald, Surman v Fitzgerald* [1904] 1 Ch 573.

9 *Re Dugdale, Dugdale v Dugdale* (1888) 38 ChD 176; *Re Mabbett, Pitman v Holborrow* [1891] 1 Ch 707; *Re Ross, Ashton v Ross* [1900] 1 Ch 162; and see TRUSTS. As to interests terminable on attempted alienation see PARA 1271 post.

10 *Re Fitzgerald, Surman v Fitzgerald* [1904] 1 Ch 573 at 593, CA; but see CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 416-417. As to forfeiture on attempted alienation see further PARA 1271 post.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(6) RESTRAINTS ON ALIENATION/1270. Avoidance of dispositions in fraud of creditors etc.

1270. Avoidance of dispositions in fraud of creditors etc.

Where a person is adjudged bankrupt and he has at a relevant time¹ entered into a transaction with any person at an undervalue², the trustee of the bankrupt's estate may apply to the court for an order requiring any property transferred or property representing the proceeds of sale of property so transferred as part of the transaction to be vested in the trustee of the bankrupt's estate as part of that estate³. Similar provisions apply where an individual has given a preference to any person⁴. Similar orders may be made⁵, whether or not insolvency proceedings have been taken, by specified persons⁶ where a transaction at an undervalue⁷ has been made with the intention of defrauding creditors⁸.

Corresponding provisions in relation to transactions at an undervalue and the giving of a preference apply to the insolvency of companies⁹. The provisions relating to transactions defrauding creditors¹⁰ apply to a body corporate as well as to an individual.

Restraints on dealings with property and the avoidance of transactions under the statutory provisions relating to matrimonial causes are considered elsewhere¹¹.

1 For the meaning of a 'relevant time' see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 660.

2 For the meaning of 'transaction at an undervalue' see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 654.

3 As to the orders available see the Insolvency Act 1986 s 342 (as amended) and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 661.

4 See *ibid* ss 340-342 (as amended) and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 653 et seq.

- 5 As to the orders available see *ibid* s 425 and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 666.
- 6 See *ibid* s 424 and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 663.
- 7 See *ibid* s 423 (1) and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 665.
- 8 As to the precise intention see *ibid* s 423 (3) and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 664.
- 9 See *ibid* ss 238-241 (as amended) and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 843 et seq.
- 10 See *ibid* ss 423-425 and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 853 et seq.
- 11 See MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 586.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/4. ALIENATION/(6) RESTRAINTS ON ALIENATION/1271. Limitation until attempted alienation.

1271. Limitation until attempted alienation.

Although provisions in restraint of alienation, or excluding creditor's rights, are invalid when applied to an absolute interest, there is nothing to prevent property from being settled for life estates determinable on alienation, bankruptcy or insolvency, with a limitation over upon the happening of any of those events¹. This may be effected by merely directing that the income of the property be held on protective trusts for the benefit of any person for the period of his life or for any less period². The owner of property cannot, however, qualify his own interest in it by a condition determining that interest on his bankruptcy³.

1 *Montefiore v Behrens* (1865) LR 1 Eq 171; *Oldham v Oldham* (1867) LR 3 Eq 404; *Hatton v May* (1876) 3 ChD 148; *Metcalfe v Metcalfe* [1891] 3 Ch 1, CA. See further BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 405 et seq; GIFTS vol 52 (2009) PARA 254.

2 See the Trustee Act 1925 s 33 and SETTLEMENTS vol 42 (Reissue) PARAS 917-919.

3 *Mackintosh v Pogose* [1895] 1 Ch 505 at 511-514; *Re Brewer's Settlement, Morton v Blackmore* [1896] 2 Ch 503; and see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 409.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/5. CHANGE OF NAME/(1) IN GENERAL/1272. Liberty to change name.

5. CHANGE OF NAME

(1) IN GENERAL

1272. Liberty to change name.

An individual acquires his original name when his name is registered at birth¹. Subject to certain requirements of notification imposed in the case of aliens², the law prescribes no rules limiting a person's liberty to change his name³. He may assume any name he pleases in addition to, or in substitution for, his original name; and, in adopting even the name or combination of names by which another person is already known, he does not commit a legal wrong against that person⁴. The law concerns itself only with the question whether he has in

fact assumed and has come to be known by a name different from that by which he was originally known.

1 As to registration of births see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 538 et seq. This paragraph was cited as representing the law in *Standard Property Investment plc v British Plastics Federation* (1985) 53 P & CR 25 at 29 per Walton J.

2 See BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 97.

3 It should be noted, however, that in *Davies v Lowndes* (1835) 1 Bing NC 597 at 618, Tindal CJ said that 'a man may, if he pleases, and it is not for any fraudulent purpose', take a new name. As to the change of name of certain kinds of body see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1869; COMPANIES vol 14 (2009) PARA 217 et seq; CORPORATIONS vol 9(2) (2006 Reissue) PARA 1119; FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 2125-2126; FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2440; COMPETITION. As to transsexuals see Case 2/1985/88/135 *The Rees Case* [1987] 2 FLR 111, ECHR; Case 16/1989/176/232 *The Cossey Case* [1991] 2 FLR 492, ECHR.

4 *Du Boulay v Du Boulay* (1869) LR 2 PC 430; *Earl Cowley v Countess Cowley* [1901] AC 450 at 460, HL per Lord Lindley; *R v Whitmore* (1914) 10 Cr App Rep 204, CCA (use of a name held to amount to false pretences). See further, and as to the use of a name for trade purposes para 1202 ante. As to controls over business names see the Business Names Act 1985; COMPANIES vol 14 (2009) PARA 223 et seq; and TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 509.

UPDATE

1272 Liberty to change name

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/5. CHANGE OF NAME/(1) IN GENERAL/1273. Christian name or forename.

1273. Christian name or forename.

In principle an adult may change both his forename and his surname by use and reputation¹. It has, however, been held² that the Christian name given to a person on baptism can be changed only on confirmation³, by Act of Parliament⁴ or, in a sense, by adding a name when a child is adopted⁵. In a few cases authority to take a new forename has been given by royal licence⁶. It is probable that the name given at baptism is the correct first, or proper, name, and that an assumed name does not displace it; but, if an individual has become generally known by a name which he has assumed in addition to or in place of his baptismal name, there is no doubt that the name so assumed is valid for purposes of legal identification⁷. The limitations relating to Christian names in the strict sense do not apply to other forenames and are commonly disregarded in practice. A deed poll intended to change a Christian name may be accepted for enrolment⁸.

A person who, in executing an instrument, subscribes a forename which is not his Christian name may be sued in that name, and is bound as he would be if he had signed his proper name⁹. In this respect there is no difference between the Christian name or forename and the surname.

1 This paragraph was cited as representing the law in *Standard Property Investment plc v British Plastics Federation* (1985) 53 P & CR 25 at 29 per Walton J.

2 *Re Parrott, Cox v Parrott* [1946] Ch 183, [1946] 1 All ER 321.

3 Co Litt 3a ('A man may have divers names at divers times, but not divers Christian names'); and see *Walden v Holman* (1704) 6 Mod Rep 115 at 116 per Holt CJ; *Jones v Macquillin* (1793) 5 Term Rep 195; *Re Parrott, Cox v Parrott* [1946] 1 Ch 183 at 186, [1946] 1 All ER 321 at 322. The change of name at confirmation is also mentioned in the same connection, and some doubt was thrown on Coke's dictum in that respect by Dr Burn (1 Burn's Ecclesiastical Law 80), but in the opinion of Sir R Phillimore (1 Phillimore's Ecclesiastical Law of the Church of England (2nd Edn) 517) the dictum still remains good and the law has not been altered. Coke mentions the case of Sir Francis Gawdie, Chief Justice of the Common Pleas, who, being baptised as Thomas, took the name of Francis on confirmation. For a similar change in 1886 see 2 Notes and Queries (7th Series) 77. If it is desired for sufficient reason that a Christian name be changed, the bishop may confirm a person by a new Christian name, which is thereafter deemed to be that person's lawful Christian name: Revised Canons Ecclesiastical, Canon b27 para 6. Any such change of name must be recorded in the register of confirmations: Canon b39 para 2. See ECCLESIASTICAL LAW vol 14 paras 999-1000. An addition to the baptismal name at confirmation is usual in the Roman Catholic Church: Phillimore and Fry's Change of Name (1905 Edn) xxi.

4 See eg the Baines Name Act 1907, a private Act under which the name of Henry Rodd was assumed in lieu of the original Christian name Raymond Hill.

5 See *Re Parrott, Cox v Parrott* [1946] Ch 183 at 186, 187, [1946] 1 All ER 321 at 323 per Vaisey J. The right to change a Christian name is recognised by implication in the Companies Act 1985 s 10 (2), Sch 1 para 1 (a) (now repealed).

6 See PARA 1278 text and note 1 post.

7 *Walden v Holman* (1704) 6 Mod Rep 115 at 116 per Holt CJ; *R v Billingshurst Inhabitants* (1814) 3 M & S 250 (where it was shown that Abraham Langley had for three years been known in the village, where his banns of marriage were published, by the name of George Smith, and it was held that the banns in which he was designated by that name were properly published); and see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 69. It has been said that, where there is more than one baptismal name, there is a presumption that the person is known by the first name: *Re Richards, ex p Richards* (1842) 6 Jur 136. As to the assumption of a surname by an illegitimate child see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 98; and as to entering the father's name in the register of births when the birth of an illegitimate child is registered see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 98.

8 See PARA 1279 post. In this case a certificate must be filed to the following effect: 'Notwithstanding the decision of Vaisey J in *Re Parrott, Cox v Parrott* [1946] Ch 183, [1946] 1 All ER 321, the applicant desires the enrolment to proceed'. This puts the risk that the change in Christian name may not be effective clearly on the applicant.

9 *Evans v King* (1745) Willes 554; *Gould v Barnes* (1811) 3 Taunt 504; *Addis v Norris* (1831) 7 Bing 455; *Williams v Bryant* (1839) 5 M & W 447. When pleas in abatement were allowed, and such a plea might be founded on a mistake made with regard to the defendant's name, it was not enough to say that the name applied to him was not his baptismal name; it had further to be averred that he had not by repute acquired that name: *Walden v Holman* (1704) 6 Mod Rep 115; *Jones v Macquillin* (1793) 5 Term Rep 195.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/5. CHANGE OF NAME/(1) IN GENERAL/1274. Surname.

1274. Surname.

A surname in common law is simply the name by which a person is known¹. Because in the first instance surnames were arbitrarily assumed², there was never any doubt that they could be changed at pleasure³. An Act of Parliament, royal licence or other such formality is not required for the purpose⁴.

Some formality may be required in order to comply with a name and arms clause⁵ in a will or settlement⁶. If, in order to comply with such a requirement, a person wishes to retain his old name, the new name should be added after the old name either with or without a hyphen; prefixing the new name will not suffice⁷.

1 *D v B (otherwise D) (Surname: Birth Registration)* [1979] Fam 38 at 46; sub nom *D v B (otherwise D) (child: surname)* [1979] 1 All ER 92 at 97, CA per Ormrod LJ.

This paragraph was cited as representing the law in *Standard Property Investment plc v British Plastics Federation* (1985) 53 P & CR 25 at 29 per Walton J.

2 It is said that the use of surnames was first introduced about the time of the Norman conquest, and was not commonly adopted until the close of the fourteenth century: see J H Markland's paper in 18 *Archaeologia* 105. Cf Lower's *English Surnames* (2nd Edn) 38 et seq; Lower's *Patronymica Britannica* (1860 Edn) xiii. It seems that the insertion of a hyphen between the last forename and the surname changes the surname: 76 LS Gaz 62.

3 See the dictum of Tindal CJ in *Davies v Lowndes* (1835) 1 Bing NC 597 at 618 (cited in PARA 1272 note 3 ante); *Dancer v Dancer (Hare intervening; Marsden cited)* [1949] P 147; sub nom *Dancer v Dancer* [1948] 2 All ER 73. As to changing the surnames of children when the parents do not agree see *Re T (otherwise H) (an infant)* [1963] Ch 238, [1962] 3 All ER 970; *Y v Y* [1973] Fam 147, [1973] 2 All ER 574; *D v B (otherwise D) (Surname: Birth Registration)* [1979] Fam 38 at 46; sub nom *D v B (otherwise D) (child: surname)* [1979] 1 All ER 92 at 97, CA; *R v R* (1982) 3 FLR 345, CA. The child's welfare is the first and paramount consideration: *W v A* [1981] Fam 14, [1981] 1 All ER 100, CA (where the authorities are reviewed); *Re F (Child: Surname)* [1993] 2 FLR 837, CA. See also *R (BM) v R (DN) (child: surname)* [1978] 2 All ER 33, [1977] 1 WLR 1256, CA. Where a residence order or a care order is in force with respect to a child, no person may cause the child to be known by a new surname without either the written consent of every person who has parental responsibility for the child or the leave of the court: see the Children Act 1989 ss 13 (1), 33 (7); *Re J (a Minor) (Change of Name)* [1993] 1 FLR 699 (where Booth J said that what was being asked in the case before her was not that the child be allowed to change her name legally but that she be allowed to use her foster parents' name for purposes of school, hospital, general practitioners, dentist and for everyday living purposes) and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 262, 276.

4 *Barlow v Bateman* (1730) 3 P Wms 64; *Gulliver d Corrie v Ashby* (1766) 4 Burr 1929; *Doe d Luscombe v Yates* (1822) 5 B & Ald 544; *Davies v Lowndes* (1835) 1 Bing NC 597 at 618; *Re Berens, Re Dowdeswell, Berens-Dowdeswell v Holland-Martin* [1926] Ch 596. For a discussion of the question see the debate in the House of Commons in the case of *Jones taking the name of Herbert* 167 H of C Official Report (3rd series) cols 430-436. At that time (1862) the idea seems to have prevailed that a royal licence was necessary to secure official recognition of a change of name.

5 As to name and arms clauses generally see SETTLEMENTS vol 42 (Reissue) PARA 745 et seq. For the meaning of 'surname' in a name and arms clause see *Re Neeld, Carpenter v Inigo-Jones* [1962] Ch 643, [1962] 2 All ER 335. CA and SETTLEMENTS vol 42 (Reissue) PARA 745.

6 *Re Croxon, Croxon v Ferrers* [1904] 1 Ch 252; cf *Davies v Lowndes* (1835) 1 Bing NC 597.

7 *Re Llangattock, Shelley v Harding* (1917) 33 TLR 250; *Re Berens, Re Dowdeswell, Berens-Dowdeswell v Holland-Martin* [1926] Ch 596.

UPDATE

1274 Surname

NOTE 3--See also *Re C (Minors) (Change of Surname)* [1997] 3 FCR 310, CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 141; *Re S (A Minor) (Change of Name)* [1999] 1 FCR 304, CA, CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 276; *Dawson v Wearmouth* [1999] 2 All ER 353, HL, CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 263; and *Re W (A Child) (Illegitimate Child: Change of Surname); Re A (A Child); Re B (Children)* [2000] 2 WLR 258, CA, REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 552.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/5. CHANGE OF NAME/(1) IN GENERAL/1275. Particular cases.

1275. Particular cases.

It is the normal convention, but no more than that, that a married woman assumes the name of her husband on marriage, although there is nothing to prevent her retaining her own name¹, and she may retain her husband's name even though the marriage is subsequently dissolved and each party marries again².

A solicitor may change his name in the same way as any other person³, but, as no person is qualified to act as a solicitor unless his name is on the roll of solicitors⁴, it is necessary to have the appropriate entry made on the roll when a solicitor changes his name⁵. It is a requirement of the right of persons following certain other professions to use particular descriptions, or to practise the profession itself in some cases, that their names should be registered in a particular register or list⁶, and in such cases the entry of an alteration in name in the register would also be necessary.

A change of name does not affect the right of a person to take a benefit under a will or other such instrument unless there are grounds for construing the will otherwise⁷.

1 *D v B (otherwise D) (Surname: Birth Registration)* [1979] Fam 38 at 46; sub nom *D v B (otherwise D) (child: surname)* [1979] 1 All ER 92 at 97, CA per Ormrod LJ.

This paragraph was cited as representing the law in *Standard Property Investment plc v British Plastics Federation* (1985) 53 P & CR 25 at 29 per Walton J.

2 See MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 215.

3 See PARAS 1272-1274 ante.

4 See the Solicitors Act 1974 s 1 (b) and LEGAL PROFESSIONS vol 65 (2008) PARA 635.

5 As to the procedure see LEGAL PROFESSIONS vol 65 (2008) PARA 663.

6 See eg ANIMALS vol 2 (2008) PARA 1126 et seq (veterinary surgeons); BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARAS 226-240 (architects); MEDICAL PROFESSIONS vol 30(1) (Reissue) PARAS 190 et seq (doctors), 417 et seq (dentists), 721 et seq (nurses, midwives and health visitors), 837 et seq (opticians), 888 et seq (pharmaceutical chemists).

7 See WILLS vol 50 (2005 Reissue) PARA 570.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/5. CHANGE OF NAME/(2) AUTHENTICATION OF CHANGE/1276. Modes of authentication.

(2) AUTHENTICATION OF CHANGE

1276. Modes of authentication.

In order to preserve testimony and to obviate the doubt and confusion which a change of name is likely to involve, it is usual to adopt one of the three following courses:

- 17 (1) to obtain a private Act of Parliament¹;
- 18 (2) to obtain a royal licence²; or
- 19 (3) to execute a deed poll³.

1 See PARA 1277 post.

2 See PARA 1278 post.

3 See PARA 1279 post.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/5. CHANGE OF NAME/(2) AUTHENTICATION OF CHANGE/1277. Act of Parliament.

1277. Act of Parliament.

Recourse to Parliament for authority to adopt a new surname is unusual, but it may be necessary to obtain a private Act, as, for example, in a case in which the 'name and arms' clause directs the adoption of that course¹.

¹ See 3 Davidson's Precedents and Forms in Conveyancing (3rd Edn) Pt I 356. Such an Act is not imperative in its terms; it merely permits the assumption of a new name. For an example see the private Act, 22 Vict c 1 (1859) (Clifton's Name). As to the procedure for obtaining a private Act see PARLIAMENT vol 34 (Reissue) PARA 850 et seq; and as to name and arms clauses see SETTLEMENTS vol 42 (Reissue) PARA 745 et seq.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/5. CHANGE OF NAME/(2) AUTHENTICATION OF CHANGE/1278. Royal licence.

1278. Royal licence.

A change of name may be authenticated by royal licence¹. Although a royal licence is not necessary, in law, to effect a change of surname, it is necessary to enable the arms of one family to be assumed by another, that being contrary to the law of arms².

¹ The first instance of a royal licence is said to have occurred in 1679, when the Earl of Ogle, son of the Duke of Newcastle, was allowed to assume the name of Percie. Royal licences are recorded in the College of Arms. As to the mode of application for the grant of a royal licence see *Earl Cowley v Countess Cowley* [1901] AC 450 at 456, HL and PEERAGES AND DIGNITIES vol 79 (2008) PARA 875.

² See *Manchester Corp'n v Manchester Palace of Varieties Ltd* [1955] P 133 at 149, [1955] 1 All ER 387 at 393, Court of Chivalry per Lord Goddard, Surrogate and PEERAGES AND DIGNITIES vol 79 (2008) PARAS 874-875.

Halsbury's Laws of England/PERSONAL PROPERTY (VOLUME 35 (REISSUE))/5. CHANGE OF NAME/(2) AUTHENTICATION OF CHANGE/1279. Deed poll.

1279. Deed poll.

The declaration of a person's intention to change his surname may be evidenced by a deed poll¹. He may declare his determination to assume a new name in addition to or in substitution for his original name. When duly executed and attested, the deed poll may be enrolled in the Central Office of the Supreme Court² or in the College of Arms.

A person seeking to enrol a deed poll ('the applicant') must be³ a Commonwealth citizen⁴; and he must be described in the deed poll as single, married, widowed or divorced⁵. As proof of the citizenship claimed in the deed poll the applicant must produce:

- 20 (1) a certificate of birth; or
- 21 (2) a certificate of citizenship by registration or naturalisation or otherwise; or
- 22 (3) some other document evidencing such citizenship⁶.

In addition to the documents set out in heads (1) to (3) above, an applicant who is married must:

- 23 (a) produce his certificate of marriage; and
- 24 (b) show that notice of his intention to apply for the enrolment of the deed poll evidencing the change of name has been given to his spouse by delivery or by post to his spouse's last known address; and
- 25 (c) show that he has obtained the consent of his spouse to the proposed change of name or that there is good reason why such consent should be dispensed with⁷.

The applicant must sign the deed poll in both his old and new names⁸. If the applicant is resident outside the United Kingdom⁹, he must provide evidence that such residence is not intended to be permanent; and the applicant may be required to produce a certificate by a solicitor as to the nature and probable duration of such residence¹⁰.

The deed poll and the documents referred to above must be exhibited to a statutory declaration by a Commonwealth citizen who is a householder in the United Kingdom and who must declare that he is such in the statutory declaration¹¹. The declaration must state the period, which should ordinarily not be less than ten years, during which the householder has known the applicant and must identify the applicant as the person referred to in the documents exhibited to the declaration¹².

In relation to a deed poll evidencing the change of name of a child¹³:

- 26 (i) if the child is under the age of 16, the deed poll must be executed by a person having parental responsibility¹⁴ for him¹⁵;
- 27 (ii) if the child has attained the age of 16, the deed poll must, except in the case of a child who is female and is married, be executed by a person having parental responsibility for the child and be indorsed with the child's consent signed in both his old and new names and duly witnessed¹⁶.

The application for enrolment in the case of a child must be supported:

- 28 (A) by an affidavit showing that the change of name is for the benefit of the child and that the application is submitted by all persons having parental responsibility for the child or that it is submitted by one person having parental responsibility for the child with the consent of every other such person or that it is submitted by one person having parental responsibility for the child without the consent of every other such person, or by some other person whose name and capacity are given, for reasons set out in the affidavit; and
- 29 (B) by such other evidence, if any, as the Master of the Rolls may require in the particular circumstances of the case¹⁷.

Upon enrolment the deed poll must be advertised in the London Gazette by the clerk in charge for the time being of the Filing and Record Department of the Central Office of the Supreme Court¹⁸.

A deed poll is, however, just as effective or ineffective whether it is enrolled or not; the only point of enrolment is that it will provide unquestionable proof, if proof is required, of the execution of the deed¹⁹.

1 As to the nature of a deed poll see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 3.

2 See RSC Ord 63 r 10. The Enrolment of Deeds (Change of Name) Regulations 1994, SI 1994/604, made under the Supreme Court Act 1981 s 133 (1), govern the enrolment in the Central Office of the Supreme Court of deeds evidencing change of name ('deeds poll'): Enrolment of Deeds (Change of Name) Regulations 1994 reg 1 (2). By virtue of the Supreme Court Act 1981 s 133 the enrolment of deeds is under the jurisdiction of the Master of the Rolls who would be consulted in case of any doubt as to the propriety of any enrolment. In one case Lord Denning MR refused to enrol the addition of 'Lord de Carmel' to the name of one 'Jack White' as being likely to mislead or cause confusion: see Daily Telegraph dated 1 August 1979 p 3, though the report is thought to be inaccurate in stating the decision to be that of the Court of Appeal. See also text to note 19 *infra*.

3 le as defined by the British Nationality Act 1981 s 37 (1): see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 11.

4 Enrolment of Deeds (Change of Name) Regulations 1994 reg 2 (1). If the applicant is a British citizen, a British Dependent Territories citizen or a British Overseas citizen, he must be described as such in the deed poll which must also specify the section of the British Nationality Act 1981 under which the relevant citizenship was acquired: Enrolment of Deeds (Change of Name) Regulations 1994 reg 2 (2). In any other case the applicant must be described as a Commonwealth citizen: reg 2 (3).

The restrictions on aliens changing their names under the Aliens Restriction (Amendment) Act 1919 s 13 were repealed by the Statute Law (Repeals) Act 1971.

5 Enrolment of Deeds (Change of Name) Regulations 1994 reg 2 (4).

6 Ibid reg 3 (1).

7 Ibid reg 3 (2).

8 Ibid reg 6.

9 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706 preamble art 1; Interpretation Act 1978 s 22 (1), Sch 2 para 5 (a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom.

10 Enrolment of Deeds (Change of Name) Regulations 1994 reg 5.

11 Ibid reg 4 (1).

12 Ibid reg 4 (2). Where the period mentioned in reg 4 (2) is stated to be less than ten years, the Master of the Rolls may in his absolute discretion decide whether to permit the deed poll to be enrolled and may require the applicant to provide more information before so deciding: reg 4 (3).

13 Subject to *ibid* reg 8 (2)-(8) (see *infra*), the Enrolment of Deeds (Change of Name) Regulations 1994 apply in relation to a deed poll evidencing the change of name of a child as if the child were the applicant (reg 8 (1)); but reg 8 (3)-(8) does not apply to a child who has attained the age of 16, is female and is married (reg 8 (3)). Regulation 6 (see *supra*) does not, however, apply to a child who has not attained the age of 16: reg 8 (1), (7).

14 For these purposes, 'parental responsibility' has the meaning given in the Children Act 1989 s 3 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 134): Enrolment of Deeds (Change of Name) Regulations 1994 reg 8 (1), (8).

15 Ibid reg 8 (1), (3).

16 Ibid reg 8 (1), (4).

17 Ibid reg 8 (1), (5). Regulation 4 (2) (see *supra*) does not apply but the statutory declaration mentioned in reg 4 (1) (see *supra*) must state how long the householder has known the deponent under reg 8 (5) (a) (see text head (A) *supra*) and the child respectively: reg 8 (1), (6).

Where a parent has by an order of the High Court or county court been given custody or care and control of a child and applies to the Central Office, Filing Department, for the enrolment of a deed poll to change the surname of such child who is under the age of 18 years (unless, in the case of a female, she is married below that age), the application must be supported by the production of the consent in writing of the other parent. In the absence of such consent the application will be adjourned generally unless and until leave is given to change the surname of such child in the proceedings in which such order was made and such leave is produced to the Central Office.

Where an application is made to the Central Office, Filing Department, by a parent who has not been given the custody or care and control of the child by any order of the High Court or county court for the enrolment of a deed poll to change the surname of such child who is under the age of 18 years (unless, in the case of a female,

she is married below that age), leave of the court to enrol such deed will be granted if the consent in writing of the other parent is produced, or if the other parent is dead or beyond the seas or, despite the exercise of reasonable diligence, it has not been possible to find him or her, or for other good reason. In case of any doubt the Senior Master or, in his absence, the Practice Master, will refer the matter to the Master of the Rolls. In the absence of any of the conditions specified supra, the Senior Master or the Master of the Rolls, as the case may be, may refer the matter to the Official Solicitor for investigation and report: Queen's Bench Masters' Practice Direction 42.

See also *Re T (otherwise H) (an infant)* [1963] Ch 238, [1962] 3 All ER 970 (enrolment of a deed poll in respect of a minor effected by a mother without the father's knowledge or consent declared to be invalid).

18 Enrolment of Deeds (Change of Name) Regulations 1994 reg 7. As to fees see the Enrolment of Deeds (Fees) Regulations 1994, SI 1994/601.

19 *D v B (otherwise D) (Surname: Birth Registration)* [1979] Fam 38 at 46; sub nom *D v B (otherwise D) (child: surname)* [1979] 1 All ER 92 at 97, CA per Ormerod LJ. See also Daily Telegraph dated 1 August 1979 p 3 and note 2 supra.

UPDATE

1279 Deed poll

TEXT AND NOTE 2--RSC replaced by the Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

NOTE 4--For 'British Dependent Territories citizen' read 'British overseas territories citizen': see the British Overseas Territories Act 2002 s 2(3).

TEXT AND NOTES 5, 7, 13-17--SI 1994/604 regs 2(4), 3(2), 8 amended: SI 2005/2056.